

By:



S.B. No. 1512

A BILL TO BE ENTITLED

AN ACT

relating to the use and management of surface water resources.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.002, Water Code, is amended by amending Subdivision (1) and adding Subdivision (7) to read as follows:

(1) "Commission" means the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality.

(7) "Developed water" means:

(A) groundwater that is in a watercourse or stream, that would not be in the watercourse or stream but for the efforts of the developer, and that is intended for subsequent diversion and use by the developer;

(B) surface water obtained through an approved interbasin transfer of water that is in a watercourse or stream, that would not be in the watercourse or stream but for the efforts of the developer, and that is intended for subsequent diversion and use by the developer;

(C) waters imported from another state; and

(D) waters originating in the bays or arms of the Gulf of Mexico.

SECTION 2. Subsection (e), Section 11.023, Water Code, is amended to read as follows:

(e) The amount of water appropriated for each purpose

____.B. No. ____

mentioned in this section shall be specifically appropriated,
stored, or diverted for that purpose, subject to the preferences
prescribed in Section 11.024 of this code. The commission may
authorize appropriation of a single amount or volume of water for
more than one purpose of use. In the event that a single amount or
volume of water is appropriated for more than one purpose of use,
the total amount of water actually diverted for all of the
authorized purposes may not exceed the total amount of water
appropriated.

SECTION 3. Subsection (b), Section 11.042, Water Code, is
amended to read as follows:

(b) A person who wishes to discharge and then subsequently
divert and reuse the person's existing return flows derived from
developed water [~~privately owned groundwater~~] must obtain prior
authorization from the commission for the diversion and the reuse
of these return flows. The authorization may allow for the
diversion and reuse by the discharger of existing return flows,
less carriage losses, and shall be subject to special conditions if
necessary to protect an existing water right that was granted based
on the use or availability of these return flows. Special
conditions may also be provided to help maintain instream uses and
freshwater inflows to bays and estuaries. A person wishing to
divert and reuse future increases of return flows derived from
developed water [~~privately owned groundwater~~] must obtain
authorization to reuse increases in return flows before the
increase.

SECTION 4. Subsection (c), Section 11.126, Water Code, is

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1 amended to read as follows:

2 (c) If the application proposes construction of a dam
3 greater than six feet in height measured from the channel invert
4 elevation to the top of the dam either for diversion or storage, the
5 executive director may also require filing a copy of all plans and
6 specifications and a copy of the engineer's field notes of any
7 survey of the lake or reservoir. No work on the project shall
8 proceed until approval of the plans is obtained from the executive
9 director.

10 SECTION 5. This Act takes effect September 1, 2005.

BILL ANALYSIS

Senate Research Center

S.B. 1512
By: Averitt
Natural Resources
5/10/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

As proposed, S.B. 1512 updates various provisions in Chapter 11, Water Code, related to surface water resources for internal consistency and clarity.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.002, Water Code, by amending Subdivision (1) to redefine "commission" and adding Subdivision (7) to define "developed water."

SECTION 2. Amends Section 11.023(e), Water Code, to require the amount of water appropriated for certain purposes (such as for domestic, agricultural, and other uses) to be specifically appropriated, stored, or diverted, rather than just appropriated, for that purpose.

SECTION 3. Amends Section 11.042(b), Water Code, to require a person who wishes to discharge and then subsequently reuse the person's existing return flows derived from developed water, rather than privately owned groundwater, to obtain prior authorization from the Texas Commission on Environmental Quality. Makes a conforming change.

SECTION 4. Amends Section 11.126(c), Water Code, to specify that a dam's height, for purposes of an application for construction of a dam, is measured from the channel invert elevation to the top of the dam.

SECTION 5. Effective date: September 1, 2005.

1-1 By: Averitt S.B. No. 1512
1-2 (In the Senate - Filed March 10, 2005; March 22, 2005, read
1-3 first time and referred to Committee on Natural Resources;
1-4 May 17, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; May 17, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1512 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the use and management of surface water resources.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. The heading to Section 5.506, Water Code, is
1-13 amended to read as follows:

1-14 Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION
1-15 RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET
1-16 ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND
1-17 INSTREAM USES.

1-18 SECTION 2. Section 5.506, Water Code, is amended by adding
1-19 Subsection (a-1) and amending Subsections (b) and (c) to read as
1-20 follows:

1-21 (a-1) State water that is set aside by the commission to
1-22 meet the needs for freshwater inflows to affected bays and
1-23 estuaries and instream uses under Section 11.1471(a)(2) may be made
1-24 available temporarily for other essential beneficial uses if the
1-25 commission finds that an emergency exists that cannot practically
1-26 be resolved in another way.

1-27 (b) The commission must give written notice of the proposed
1-28 action ~~[suspension]~~ to the Parks and Wildlife Department before the
1-29 commission suspends a permit condition under Subsection (a) or
1-30 makes water available temporarily under Subsection (a-1) ~~[this~~
1-31 ~~section]~~. The commission shall give the Parks and Wildlife
1-32 Department an opportunity to submit comments on the proposed action
1-33 ~~[suspension]~~ for a period of 72 hours from receipt of the notice and
1-34 must consider those comments before issuing an order implementing
1-35 the proposed action ~~[imposing the suspension]~~.

1-36 (c) The commission may suspend a permit condition under
1-37 Subsection (a) or make water available temporarily under Subsection
1-38 (a-1) ~~[this section]~~ without notice except as required by
1-39 Subsection (b).

1-40 SECTION 3. Subsection (j), Section 5.701, Water Code, is
1-41 amended to read as follows:

1-42 (j) The fee for other uses of water not specifically named
1-43 in this section is \$1 per acre-foot, except that no political
1-44 subdivision may be required to pay fees to use water for recharge of
1-45 underground freshwater-bearing sands and aquifers or for abatement
1-46 of natural pollution. A fee is not required for a water right that
1-47 is ~~[This fee is waived for applications for instream-use water~~
1-48 ~~rights]~~ deposited into the Texas Water Trust.

1-49 SECTION 4. Section 11.002, Water Code, is amended by
1-50 amending Subdivision (1) and adding Subdivisions (7), (15), (16),
1-51 (17), (18), and (19) to read as follows:

1-52 (1) "Commission" means the Texas ~~[Natural Resource~~
1-53 ~~Conservation]~~ Commission on Environmental Quality.

1-54 (7) "Developed water" means:

1-55 (A) groundwater that is in a watercourse or
1-56 stream, that would not be in the watercourse or stream but for the
1-57 efforts of the developer, and that is intended for subsequent
1-58 diversion and use by the developer;

1-59 (B) surface water obtained through an approved
1-60 interbasin transfer of water that is in a watercourse or stream,
1-61 that would not be in the watercourse or stream but for the efforts
1-62 of the developer, and that is intended for subsequent diversion and
1-63 use by the developer;

(C) waters imported from another state; or
 (D) waters originating in the bays or arms of the
Gulf of Mexico.

(15) "Environmental flow analysis" means the
application of a scientifically derived process for predicting the
response of an ecosystem to changes in instream flows or freshwater
inflows.

(16) "Environmental flow regime" means a schedule of
flow quantities that reflects seasonal and yearly fluctuations that
typically would vary geographically, by specific location in a
watershed, and that are shown to be adequate to support a sound
ecological environment and to maintain the productivity, extent,
and persistence of key aquatic habitats in and along the affected
water bodies.

(17) "Environmental flow standards" means those
requirements adopted by the commission under Section 11.1471.

(18) "Flows commission" means the Environmental Flows
Commission.

(19) "Science advisory committee" means the Texas
Environmental Flows Science Advisory Committee.

SECTION 5. Subsections (a) and (e), Section 11.023, Water Code, are amended to read as follows:

(a) To the extent that state water has not been set aside by
the commission under Section 11.1471(a)(2) to meet downstream
instream flow needs or freshwater inflow needs, state [State] water
may be appropriated, stored, or diverted for:

(1) domestic and municipal uses, including water for
sustaining human life and the life of domestic animals;

(2) agricultural uses and industrial uses, meaning
processes designed to convert materials of a lower order of value
into forms having greater usability and commercial value, including
the development of power by means other than hydroelectric;

(3) mining and recovery of minerals;

(4) hydroelectric power;

(5) navigation;

(6) recreation and pleasure;

(7) public parks; and

(8) game preserves.

(e) The amount of water appropriated for each purpose
mentioned in this section shall be specifically appropriated,
stored, or diverted for that purpose, subject to the preferences
prescribed in Section 11.024 of this code. The commission may
authorize appropriation of a single amount or volume of water for
more than one purpose of use. In the event that a single amount or
volume of water is appropriated for more than one purpose of use,
the total amount of water actually diverted for all of the
authorized purposes may not exceed the total amount of water
appropriated.

SECTION 6. Section 11.0235, Water Code, is amended by amending Subsections (c) and (e) and adding Subsections (d-1) through (d-5) and (f) to read as follows:

(c) The legislature has expressly required the commission
while balancing all other public interests to consider and, to the
extent practicable, provide for the freshwater inflows and instream
flows necessary to maintain the viability of the state's streams,
rivers, and bay and estuary systems in the commission's regular
granting of permits for the use of state waters. As an essential
part of the state's environmental flows policy, all permit
conditions relating to freshwater inflows to affected bays and
estuaries and instream flow needs must be subject to temporary
suspension if necessary for water to be applied to essential
beneficial uses during emergencies.

(d-1) The legislature finds that to provide certainty in
water management and development and to provide adequate protection
of the state's streams, rivers, and bays and estuaries, the state
must have a process with specific timelines for prompt action to
address environmental flow issues in the state's major basin and
bay systems, especially those systems in which unappropriated water
is still available.

(d-2) The legislature finds that:

(1) in those basins in which water is available for appropriation, the commission should establish an environmental set-aside below which water should not be available for appropriation; and

(2) in those basins in which the unappropriated water that will be set aside for instream flow and freshwater inflow protection is not sufficient to fully satisfy the environmental flow standards established by the commission, a variety of approaches, both public and private, for filling the gap must be explored and pursued.

(d-3) The legislature finds that while the state has pioneered tools to address freshwater inflow needs for bays and estuaries, there are limitations to those tools in light of both scientific and public policy evolution. To fully address bay and estuary environmental flow issues, the foundation of work accomplished by the state should be improved. While the state's instream flow studies program appears to encompass a comprehensive and scientific approach for establishing a process to assess instream flow needs for rivers and streams across the state, more extensive review and examination of the details of the program, which may not be fully developed until the program is under way, are needed to ensure an effective tool for evaluating riverine environmental flow conditions.

(d-4) The legislature finds that the management of water to meet instream flow and freshwater inflow needs should be evaluated on a regular basis and adapted to reflect both improvements in science related to environmental flows and future changes in projected human needs for water. In addition, the development of management strategies for addressing environmental flow needs should be an ongoing, adaptive process that considers and addresses local issues.

(d-5) The legislature finds that recommendations for state action to protect instream flows and freshwater inflows should be developed through a consensus-based, regional approach involving balanced representation of stakeholders and that such a process should be encouraged throughout the state.

(e) The fact that greater pressures and demands are being placed on the water resources of the state makes it of paramount importance to ensure ~~[reexamine the process for ensuring]~~ that these important priorities are effectively addressed by detailing how environmental flow standards are to be developed using the environmental studies that have been and are to be performed by the state and others and specifying in clear delegations of authority how those environmental flow standards will be integrated into the regional water planning and water permitting process ~~[to the commission]~~.

(f) The legislature recognizes that effective implementation of the approach provided by this chapter for protecting instream flows and freshwater inflows will require more effective water rights administration and enforcement systems than are currently available in most areas of the state.

SECTION 7. The heading to Section 11.0236, Water Code, is amended to read as follows:

Sec. 11.0236. ~~[STUDY COMMISSION ON WATER FOR]~~ ENVIRONMENTAL FLOWS COMMISSION.

SECTION 8. Section 11.0236, Water Code, is amended by amending Subsections (a), (b), (c), (e) through (j), (n), and (o) and adding Subsection (p) to read as follows:

(a) In recognition of the importance that the ecological soundness of our riverine, bay, and estuary systems and riparian lands has on the economy, health, and well-being of the state there is created the ~~[Study Commission on Water for]~~ Environmental Flows Commission.

(b) The flows ~~[study]~~ commission is composed of nine ~~[15]~~ members as follows:

(1) three ~~[two]~~ members appointed by the governor;
 (2) three ~~[five]~~ members of the senate appointed by the lieutenant governor; and

(3) three ~~[five]~~ members of the house of representatives appointed by the speaker of the house of representatives[+]

~~[(4) the presiding officer of the commission or the presiding officer's designee,~~

~~[(5) the chairman of the board or the chairman's designee, and~~

~~[(6) the presiding officer of the Parks and Wildlife Commission or the presiding officer's designee].~~

(c) Of the members appointed under Subsection (b)(1):

(1) one member must be a member of the commission;

(2) one member must be a member of the board; and

(3) one member must be a member of the Parks and Wildlife Commission [(b)(2)].

~~[(1) one member must represent a river authority or municipal water supply agency or authority,~~

~~[(2) one member must represent an entity that is distinguished by its efforts in resource protection, and~~

~~[(3) three members must be members of the senate].~~

(e) Each ~~[appointed]~~ member of the flows ~~[study]~~ commission serves at the will of the person who appointed the member.

(f) The appointed senator with the most seniority and the appointed house member with the most seniority serve together as co-presiding officers of the flows ~~[study]~~ commission.

(g) A member of the flows ~~[study]~~ commission is not entitled to receive compensation for service on the flows ~~[study]~~ commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the flows ~~[study]~~ commission, as provided by the General Appropriations Act.

(h) The flows ~~[study]~~ commission may accept gifts and grants from any source to be used to carry out a function of the flows ~~[study]~~ commission.

(i) The commission shall provide staff support for the flows ~~[study]~~ commission.

(j) The flows ~~[study]~~ commission shall conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay, and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues that the flows ~~[study]~~ commission determines have importance and relevance to the protection of environmental flows. In evaluating the options for providing adequate environmental flows, the flows ~~[study]~~ commission shall take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers ~~[parks, game preserves]~~, and bay and estuary systems and are high priorities in the water management ~~[permitting]~~ process. The flows ~~[study]~~ commission shall specifically address:

(1) ways that the ecological soundness of those ~~[these]~~ systems will be ensured in the water rights administration and enforcement and water allocation processes; and

(2) appropriate methods to encourage persons voluntarily to convert reasonable amounts of existing water rights to use for environmental flow protection temporarily or permanently ~~[process].~~

(n) The flows ~~[study]~~ commission may ~~[shall]~~ adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362.

(o) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the flows commission.

(p) Not later than December 1, 2006, and every two years thereafter, the flows commission shall issue and promptly deliver to the governor, lieutenant governor, and speaker of the house of representatives copies of a report summarizing:

(1) any hearings conducted by the flows commission;

(2) any studies conducted by the flows commission;

(3) any legislation proposed by the flows commission;
 (4) progress made in implementing Sections 11.02361
 and 11.02362; and

(5) any other findings and recommendations of the
 flows commission [~~The study commission is abolished and this
 section expires September 1, 2005~~].

SECTION 9. Subchapter B, Chapter 11, Water Code, is amended
 by adding Sections 11.02361 and 11.02362 to read as follows:

Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY
 COMMITTEE. (a) The Texas Environmental Flows Science Advisory
 Committee consists of at least five but not more than nine members
 appointed by the flows commission.

(b) The flows commission shall appoint to the science
 advisory committee persons who will provide an objective
 perspective and diverse technical expertise, including expertise
 in hydrology, hydraulics, water resources, aquatic and terrestrial
 biology, geomorphology, geology, water quality, computer modeling,
 and other technical areas pertinent to the evaluation of
 environmental flows.

(c) Members of the science advisory committee serve
 five-year terms expiring March 1. A vacancy on the science advisory
 committee is filled by appointment by the co-presiding officers of
 the flows commission for the unexpired term.

(d) Chapter 2110, Government Code, does not apply to the
 size, composition, or duration of the science advisory committee.

(e) The science advisory committee shall:

(1) serve as an objective scientific body to advise
 and make recommendations to the flows commission on issues relating
 to the science of environmental flow protection; and

(2) develop recommendations to help provide overall
 direction, coordination, and consistency relating to:

(A) environmental flow methodologies for bay and
 estuary studies and instream flow studies;

(B) environmental flow programs at the
 commission, the Parks and Wildlife Department, and the board; and

(C) the work of the basin and bay expert science
 teams described in Section 11.02362.

(f) To assist the flows commission to assess the extent to
 which the recommendations of the science advisory committee are
 considered and implemented, the commission, the Parks and Wildlife
 Department, and the board shall provide written reports to the
 flows commission, at intervals determined by the flows commission,
 that describe:

(1) the actions taken by each agency in response to
 each recommendation; and

(2) for each recommendation not implemented, the
 reason it was not implemented.

Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME
 RECOMMENDATIONS. (a) For the purposes of this section, the flows
 commission, not later than November 1, 2005, shall define the
 geographical extent of each river basin and bay system in this state
 for the sole purpose of developing environmental flow regime
 recommendations under this section and adoption of environmental
 flow standards under Section 11.1471.

(b) The flows commission shall give priority in descending
 order to the following river basin and bay systems of the state for
 the purpose of developing environmental flow regime
 recommendations and adopting environmental flow standards:

(1) the river basin and bay system consisting of the
 Trinity and San Jacinto Rivers and Galveston Bay and the river basin
 and bay system consisting of the Sabine and Neches Rivers and Sabine
 Lake Bay;

(2) the river basin and bay system consisting of the
 Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the
 river basin and bay system consisting of the Guadalupe, San
 Antonio, and Aransas Rivers and Copano, Aransas, and San Antonio
 Bays; and

(3) the river basin and bay system consisting of the
 Nueces River and Corpus Christi and Baffin Bays, the river basin and

bay system consisting of the Rio Grande, the Rio Grande estuary, and the Lower Laguna Madre, and the Brazos River and its associated bay and estuary system.

(c) For the river basin and bay systems listed in Subsection (b)(1):

(1) the flows commission shall appoint the basin and bay area stakeholders committee not later than November 1, 2005;

(2) the basin and bay area stakeholders committee shall establish a basin and bay expert science team not later than March 1, 2006;

(3) the basin and bay expert science team shall finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the flows commission, and the commission not later than March 1, 2007;

(4) the basin and bay area stakeholders committee shall submit to the commission its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than September 1, 2007; and

(5) the commission shall adopt the environmental flow standards as provided by Section 11.1471 not later than September 1, 2008.

(d) The flows commission shall appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(2) not later than September 1, 2006, and shall appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(3) not later than September 1, 2007. The flows commission shall establish a schedule for the performance of the tasks listed in Subsections (c)(2)-(5) with regard to the river basin and bay systems listed in Subsections (b)(2) and (3) that will result in the adoption of environmental flow standards for that river basin and bay system by the commission as soon as is reasonably possible. Each basin and bay area stakeholders committee and basin and bay expert science team for a river basin and bay system listed in Subsection (b)(2) or (3) shall make recommendations to the flows commission with regard to the schedule applicable to that river basin and bay system. The flows commission shall consider the recommendations of the basin and bay area stakeholders committee and basin and bay expert science team as well as coordinate with, and give appropriate consideration to the recommendations of, the commission, the Parks and Wildlife Department, and the board in establishing the schedule.

(e) For a river basin and bay system or a river basin that does not have an associated bay system in this state not listed in Subsection (b), the flows commission shall establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards. The flows commission shall develop the schedule in consultation with the commission, the Parks and Wildlife Department, the board, and the pertinent basin and bay area stakeholders committee and basin and bay expert science team. The flows commission may, on its own initiative or on request, modify a schedule established under this subsection to be more responsive to particular circumstances, local desires, changing conditions, or time-sensitive conflicts. This subsection does not prohibit, in a river basin and bay system for which the flows commission has not yet established a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards, an effort to develop information on environmental flow needs and ways in which those needs can be met by a voluntary consensus-building process.

(f) The flows commission shall appoint a basin and bay area stakeholders committee for each river basin and bay system in this state for which a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards is specified by or established under Subsection (c), (d), or (e). Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay area stakeholders committee. Each committee must consist of at least 17 members. The members must represent appropriate stakeholders, including

representatives of:

- (1) agricultural water users;
- (2) recreational water users, including coastal recreational anglers and businesses supporting water recreation;
- (3) municipalities;
- (4) soil and water conservation districts;
- (5) industrial water users;
- (6) commercial fishermen;
- (7) public interest groups;
- (8) regional water planning groups;
- (9) groundwater conservation districts;
- (10) river authorities and other conservation and reclamation districts with jurisdiction over surface water; and
- (11) environmental interests.

(g) Members of a basin and bay area stakeholders committee serve five-year terms expiring March 1. If a vacancy occurs on a committee, the remaining members of the committee by majority vote shall appoint a member to serve the remainder of the unexpired term.

(h) Meetings of a basin and bay area stakeholders committee must be open to the public.

(i) Each basin and bay area stakeholders committee shall establish a basin and bay expert science team for the river basin and bay system for which the committee is established. The basin and bay expert science team must be established not later than six months after the date the basin and bay area stakeholders committee is established. Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay expert science team. Each basin and bay expert science team must be composed of technical experts with special expertise regarding the river basin and bay system or regarding the development of environmental flow regimes. A person may serve as a member of more than one basin and bay expert science team at the same time.

(j) The members of a basin and bay expert science team serve five-year terms expiring April 1. A vacancy on a basin and bay expert science team is filled by appointment by the pertinent basin and bay area stakeholders committee to serve the remainder of the unexpired term.

(k) The science advisory committee shall appoint one of its members to serve as a liaison to each basin and bay expert science team to facilitate coordination and consistency in environmental flow activities throughout the state. The commission, the Parks and Wildlife Department, and the board shall provide technical assistance to each basin and bay expert science team, including information about the studies conducted under Sections 16.058 and 16.059, and may serve as nonvoting members of the basin and bay expert science team to facilitate the development of environmental flow regime recommendations.

(l) Where reasonably practicable, meetings of a basin and bay expert science team must be open to the public.

(m) Each basin and bay expert science team shall develop environmental flow analyses and a recommended environmental flow regime for the river basin and bay system for which the team is established through a collaborative process designed to achieve a consensus. In developing the analyses and recommendations, the science team must consider all reasonably available science, without regard to the need for the water for other uses, and the science team's recommendations must be based solely on the best science available.

(n) Each basin and bay expert science team shall submit its environmental flow analyses and environmental flow regime recommendations to the pertinent basin and bay area stakeholders committee, the flows commission, and the commission in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). The basin and bay area stakeholders committee and the flows commission may not change the environmental flow analyses or environmental flow regime recommendations of the basin and bay expert science team.

(o) Each basin and bay area stakeholders committee shall review the environmental flow analyses and environmental flow

regime recommendations submitted by the committee's basin and bay expert science team and shall consider them in conjunction with other factors, including the present and future needs for water for other uses related to water supply planning in the pertinent river basin and bay system. The basin and bay area stakeholders committee shall develop recommendations regarding environmental flow standards and strategies to meet the environmental flow standards and submit those recommendations to the commission and to the flows commission in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). In developing its recommendations, the basin and bay area stakeholders committee shall operate on a consensus basis to the maximum extent possible.

(p) In recognition of the importance of adaptive management, after submitting its recommendations regarding environmental flow standards and strategies to meet the environmental flow standards to the commission, each basin and bay area stakeholders committee, with the assistance of the pertinent basin and bay expert science team, shall prepare and submit for approval by the flows commission a work plan. The work plan must:

(1) establish a periodic review of the basin and bay environmental flow analyses and environmental flow regime recommendations, environmental flow standards, and strategies, to occur at least once every 10 years;

(2) prescribe specific monitoring, studies, and activities; and

(3) establish a schedule for continuing the validation or refinement of the basin and bay environmental flow analyses and environmental flow regime recommendations, the environmental flow standards adopted by the commission, and the strategies to achieve those standards.

(q) In accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e), the flows commission, with input from the science advisory committee, shall review the environmental flow analyses and environmental flow regime recommendations submitted by each basin and bay expert science team. If appropriate, the flows commission shall submit comments on the analyses and recommendations to the commission for use by the commission in adopting rules under Section 11.1471. Comments must be submitted not later than six months after the date of receipt of the analyses and recommendations.

(r) In the event the commission, by permit or order, has established an estuary advisory council, that council may continue in full force and effect.

SECTION 10. Subsections (a) and (b), Section 11.0237, Water Code, are amended to read as follows:

(a) The commission may not issue a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. ~~The [This section does not prohibit the]~~ commission may approve ~~[from issuing]~~ an application to amend ~~[amendment to]~~ an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) This section does not alter the commission's obligations under Section 11.042(b), 11.042(c), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491, 11.150, 11.152, 16.058, or 16.059.

SECTION 11. Subsection (b), Section 11.042, Water Code, is amended to read as follows:

(b) A person who wishes to discharge and then subsequently divert and reuse the person's existing return flows derived from developed water ~~[privately owned groundwater]~~ must obtain prior authorization from the commission for the diversion and the reuse of these return flows. The authorization may allow for the diversion and reuse by the discharger of existing return flows, less carriage losses, and shall be subject to special conditions if necessary to protect an existing water right that was granted based on the use or availability of these return flows. Special conditions may also be provided to help maintain instream uses and freshwater inflows to bays and estuaries. A person wishing to

divert and reuse future increases of return flows derived from developed water ~~[privately owned groundwater]~~ must obtain authorization to reuse increases in return flows before the increase.

SECTION 12. Subsection (b), Section 11.082, Water Code, is amended to read as follows:

(b) The state may recover the penalties prescribed in Subsection (a) ~~[of this section]~~ by suit brought for that purpose in a court of competent jurisdiction. The state may seek those penalties regardless of whether a watermaster has been appointed for the water division, river basin, or segment of a river basin where the unlawful use is alleged to have occurred.

SECTION 13. Section 11.0841, Water Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of this section, the Parks and Wildlife Department has:

(1) the rights of a holder of a water right that is held in the Texas Water Trust, including the right to file suit in a civil court to prevent the unlawful use of such a right;

(2) the right to act in the same manner that a holder of a water right may act to protect the holder's rights in seeking to prevent any person from appropriating water in violation of a set-aside established by the commission under Section 11.1471 to meet instream flow needs or freshwater inflow needs; and

(3) the right to file suit in a civil court to prevent the unlawful use of a set-aside established under Section 11.1471.

SECTION 14. Subsection (a), Section 11.0842, Water Code, is amended to read as follows:

(a) If a person violates this chapter, a rule or order adopted under this chapter or Section 16.236 ~~[of this code]~~, or a permit, certified filing, or certificate of adjudication issued under this chapter, the commission may assess an administrative penalty against that person as provided by this section. The commission may assess an administrative penalty for a violation relating to a water division or a river basin or segment of a river basin regardless of whether a watermaster has been appointed for the water division or river basin or segment of the river basin.

SECTION 15. Subsection (a), Section 11.0843, Water Code, is amended to read as follows:

(a) Upon witnessing a violation of this chapter or a rule or order or a water right issued under this chapter, the executive director or a person designated by the executive director, including a watermaster or the watermaster's deputy, [as defined by commission rule,] may issue the alleged violator a field citation alleging that a violation has occurred and providing the alleged violator the option of either:

(1) without admitting to or denying the alleged violation, paying an administrative penalty in accordance with the predetermined penalty amount established under Subsection (b) ~~[of this section]~~ and taking remedial action as provided in the citation; or

(2) requesting a hearing on the alleged violation in accordance with Section 11.0842 ~~[of this code]~~.

SECTION 16. Subsection (c), Section 11.126, Water Code, is amended to read as follows:

(c) If the application proposes construction of a dam greater than six feet in height, measured from the channel invert elevation to the top of the dam, either for diversion or storage, the executive director may also require filing a copy of all plans and specifications and a copy of the engineer's field notes of any survey of the lake or reservoir. No work on the project shall proceed until approval of the plans is obtained from the executive director.

SECTION 17. Subsection (b), Section 11.134, Water Code, is amended to read as follows:

(b) The commission shall grant the application only if:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;

10-1 (2) unappropriated water is available in the source of
 10-2 supply;

10-3 (3) the proposed appropriation:
 10-4 (A) is intended for a beneficial use;
 10-5 (B) does not impair existing water rights or
 10-6 vested riparian rights;

10-7 (C) is not detrimental to the public welfare;
 10-8 (D) considers any applicable environmental flow
 10-9 standards established under Section 11.1471 and, if applicable, the
 10-10 assessments performed under Sections 11.147(d) and (e) and Sections
 10-11 11.150, 11.151, and 11.152; and

10-12 (E) addresses a water supply need in a manner
 10-13 that is consistent with the state water plan and the relevant
 10-14 approved regional water plan for any area in which the proposed
 10-15 appropriation is located, unless the commission determines that
 10-16 conditions warrant waiver of this requirement; and

10-17 (4) the applicant has provided evidence that
 10-18 reasonable diligence will be used to avoid waste and achieve water
 10-19 conservation as defined by [~~Subdivision (8)(B),~~] Section
 10-20 11.002(8)(B) [11.002].

10-21 SECTION 18. Section 11.147, Water Code, is amended by
 10-22 amending Subsections (b), (d), and (e) and adding Subsections (e-1)
 10-23 and (e-2) to read as follows:

10-24 (b) In its consideration of an application for a permit to
 10-25 store, take, or divert water, the commission shall assess the
 10-26 effects, if any, of the issuance of the permit on the bays and
 10-27 estuaries of Texas. For permits issued within an area that is 200
 10-28 river miles of the coast, to commence from the mouth of the river
 10-29 thence inland, the commission shall include in the permit any
 10-30 conditions considered necessary to maintain freshwater inflows to
 10-31 any affected bay and estuary system, to the extent practicable when
 10-32 considering all public interests and the studies mandated by
 10-33 Section 16.058 as evaluated under Section 11.1491[~~, those~~
 10-34 conditions considered necessary to maintain beneficial inflows to
 10-35 any affected bay and estuary system].

10-36 (d) In its consideration of an application to store, take,
 10-37 or divert water, the commission shall include in the permit, to the
 10-38 extent practicable when considering all public interests, those
 10-39 conditions considered by the commission necessary to maintain
 10-40 existing instream uses and water quality of the stream or river to
 10-41 which the application applies. In determining what conditions to
 10-42 include in the permit under this subsection, the commission shall
 10-43 consider among other factors:

10-44 (1) the studies mandated by Section 16.059; and
 10-45 (2) any water quality assessment performed under
 10-46 Section 11.150.

10-47 (e) The commission shall include in the permit, to the
 10-48 extent practicable when considering all public interests, those
 10-49 conditions considered by the commission necessary to maintain fish
 10-50 and wildlife habitats. In determining what conditions to include
 10-51 in the permit under this subsection, the commission shall consider
 10-52 any assessment performed under Section 11.152.

10-53 (e-1) Any permit for a new appropriation of water or an
 10-54 amendment to an existing water right that increases the amount of
 10-55 water authorized to be stored, taken, or diverted must include a
 10-56 provision allowing the commission to adjust the conditions included
 10-57 in the permit or amended water right to provide for protection of
 10-58 instream flows or freshwater inflows. With respect to an amended
 10-59 water right, the provision may not allow the commission to adjust a
 10-60 condition of the amendment other than a condition that applies only
 10-61 to the increase in the amount of water to be stored, taken, or
 10-62 diverted authorized by the amendment. This subsection does not
 10-63 affect an appropriation of or an authorization to store, take, or
 10-64 divert water under a permit or amendment to a water right issued
 10-65 before September 1, 2005. The commission shall adjust the
 10-66 conditions if the commission determines, through an expedited
 10-67 public comment process, that such an adjustment is appropriate to
 10-68 achieve compliance with applicable environmental flow standards
 10-69 adopted under Section 11.1471. The adjustment:

(1) in combination with any previous adjustments made under this subsection may not increase the amount of the pass-through or release requirement for the protection of instream flows or freshwater inflows by more than 12.5 percent of the annualized total of that requirement contained in the permit as issued or of that requirement contained in the amended water right and applicable only to the increase in the amount of water authorized to be stored, taken, or diverted under the amended water right;

(2) must be based on appropriate consideration of the priority dates and diversion locations of any other water rights granted in the same river basin that are subject to adjustment under this subsection; and

(3) must be based on appropriate consideration of any voluntary contributions to the Texas Water Trust that contribute toward meeting the environmental flow standards. Any water right holder making such donation shall be entitled to appropriate credit of such benefits against adjustments of his water right pursuant to Subdivision (1).

(e-2) Notwithstanding Subsections (b)-(e), for the purpose of determining the environmental flow conditions necessary to maintain freshwater inflows to an affected bay and estuary system, existing instream uses and water quality of a stream or river, or fish and aquatic wildlife habitats, the commission shall apply any applicable environmental flow standard, including any environmental flow set-aside, adopted under Section 11.1471 instead of considering the factors specified by those subsections.

SECTION 19. Subchapter D, Chapter 11, Water Code, is amended by adding Section 11.1471 to read as follows:

Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

(a) The commission by rule shall:

(1) adopt appropriate environmental flow standards for each river basin and bay system in this state that are adequate to support a sound ecological environment, to the maximum extent reasonable considering other public interests and other relevant factors;

(2) establish an amount of unappropriated water, if available, to be set aside to satisfy the environmental flow standards to the maximum extent reasonable when considering human water needs; and

(3) establish procedures for implementing an adjustment of the conditions included in a permit or an amended water right as provided by Section 11.147(e-1).

(b) In adopting environmental flow standards for a river basin and bay system under Subsection (a)(1), the commission shall consider:

(1) the definition of the geographical extent of the river basin and bay system adopted by the flows commission under Section 11.02362(a);

(2) the schedule for the adoption of environmental flow standards for the river basin and bay system established by the flows commission under Section 11.02362(d) or (e), if applicable;

(3) the environmental flow analyses and the recommended environmental flow regime developed by the applicable basin and bay expert science team under Section 11.02362(m);

(4) the recommendations regarding environmental flow standards and strategies to meet the flow standards developed by the applicable basin and bay area stakeholders committee under Section 11.02362(o);

(5) the specific characteristics of the river basin and bay system;

(6) economic factors;

(7) the human and other competing water needs in the river basin and bay system;

(8) all reasonably available scientific information, including any scientific information provided by the science advisory committee; and

(9) any other appropriate information.

(c) Environmental flow standards adopted under Subsection

(a)(1) must consist of a schedule of flow quantities, reflecting seasonal and yearly fluctuations that may vary geographically by specific location in a river basin and bay system.

(d) As provided by Section 11.023, the commission may not issue a permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted if the issuance of the permit or amendment would impair an environmental flow set-aside established under Subsection (a)(2). A permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted that is issued after the adoption of an applicable environmental flow set-aside must contain appropriate conditions to ensure protection of the environmental flow set-aside.

(e) An environmental flow set-aside established under Subsection (a)(2) must be assigned a priority date corresponding to the date the commission receives environmental flow regime recommendations from the applicable basin and bay expert science team and be included in the appropriate water availability models in connection with an application for a permit for a new appropriation or for an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted.

(f) An environmental flow standard or environmental flow set-aside adopted under Subsection (a) may be altered by the commission in a rulemaking process undertaken in accordance with a schedule established by the commission. The commission's schedule may not provide for the rulemaking process to occur more frequently than once every 10 years unless the applicable work plan approved by the flows commission under Section 11.02362(p) provides for a periodic review under that section to occur more frequently than once every 10 years. In that event, the commission may provide for the rulemaking process to be undertaken in conjunction with the periodic review if the commission determines that schedule to be appropriate.

SECTION 20. The heading to Section 11.148, Water Code, is amended to read as follows:

Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR ENVIRONMENTAL FLOWS.

SECTION 21. Section 11.148, Water Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) Before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1) ~~[of this section]~~, it must give written notice to the Parks and Wildlife Department of the proposed action ~~[suspension]~~. The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed action ~~[suspension]~~ within 72 hours from such time and the commission shall consider those comments before issuing its order implementing the proposed action ~~[imposing the suspension]~~.

(c) The commission may suspend the permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice to any other interested party other than the Parks and Wildlife Department as provided by Subsection (b) ~~[of this section]~~. However, all affected persons shall be notified immediately by publication, and a hearing to determine whether the suspension should be continued shall be held within 15 days of the date on which the order to suspend is issued.

SECTION 22. Subsection (a), Section 11.1491, Water Code, is amended to read as follows:

(a) The Parks and Wildlife Department and the commission

shall have joint responsibility to review the studies prepared under Section 16.058 ~~[of this code]~~, to determine inflow conditions necessary for the bays and estuaries, and to provide information necessary for water resources management. Each agency shall designate an employee to share equally in the oversight of the program. Other responsibilities shall be divided between the Parks and Wildlife Department and the commission to maximize present in-house capabilities of personnel and to minimize costs to the state. Each agency shall have reasonable access to all information produced by the other agency. Publication of reports completed under this section shall be submitted for comment to ~~[both]~~ the commission, ~~[and]~~ the Parks and Wildlife Department, the flows commission, the science advisory committee, and any applicable basin and bay area stakeholders committee and basin and bay expert science team.

SECTION 23. Subsection (g), Section 11.329, Water Code, is amended to read as follows:

(g) The commission may not assess costs under this section against a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts or against a holder of a water right placed in the Texas Water Trust for a term of at least 20 years. ~~[This subsection is not intended to affect in any way the fees assessed on a water right holder by the commission under Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993. For purposes of Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts shall be assessed fees at the same rate per acre-foot charged to a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of more than two megawatts.]~~

SECTION 24. Subsection (e), Section 11.404, Water Code, is amended to read as follows:

(e) The court may not assess costs and expenses under this section against:

(1) a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts; or

(2) a holder of a water right placed in the Texas Water Trust for a term of at least 20 years.

SECTION 25. Subchapter I, Chapter 11, Water Code, is amended by adding Section 11.4531 to read as follows:

Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For each river basin or segment of a river basin for which the executive director appoints a watermaster under this subchapter, the executive director shall appoint a watermaster advisory committee consisting of at least nine but not more than 15 members. A member of the advisory committee must be a holder of a water right or a representative of a holder of a water right in the river basin or segment of the river basin for which the watermaster is appointed. In appointing members to the advisory committee, the executive director shall consider:

(1) geographic representation;
(2) amount of water rights held;
(3) different types of holders of water rights and users, including water districts, municipal suppliers, irrigators, and industrial users; and
(4) experience and knowledge of water management practices.

(b) An advisory committee member is not entitled to reimbursement of expenses or to compensation.

(c) An advisory committee member serves a two-year term expiring August 31 of each odd-numbered year and holds office until a successor is appointed.

(d) The advisory committee shall meet within 30 days after the date the initial appointments have been made and shall select a presiding officer to serve a one-year term. The committee shall

14-1 meet regularly as necessary.

14-2 (e) The advisory committee shall:

14-3 (1) make recommendations to the executive director
14-4 regarding activities of benefit to the holders of water rights in
14-5 the administration and distribution of water to holders of water
14-6 rights in the river basin or segment of the river basin for which
14-7 the watermaster is appointed;

14-8 (2) review and comment to the executive director on
14-9 the annual budget of the watermaster operation; and

14-10 (3) perform other advisory duties as requested by the
14-11 executive director regarding the watermaster operation or as
14-12 requested by holders of water rights and considered by the
14-13 committee to benefit the administration of water rights in the
14-14 river basin or segment of the river basin for which the watermaster
14-15 is appointed.

14-16 SECTION 26. Section 11.454, Water Code, is amended to read
14-17 as follows:

14-18 Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER.
14-19 Section 11.327 applies to the duties and authority of a watermaster
14-20 appointed for a river basin or segment of a river basin under this
14-21 subchapter in the same manner as that section applies to the duties
14-22 and authority of a watermaster appointed for a water division under
14-23 Subchapter G ~~[A watermaster as the agent of the commission and under~~
14-24 ~~the executive director's supervision shall.]~~

14-25 ~~[(1) divide the water of the streams or other sources~~
14-26 ~~of supply of his segment or basin in accordance with the authorized~~
14-27 ~~water rights;~~

14-28 ~~[(2) regulate or cause to be regulated the controlling~~
14-29 ~~works of reservoirs and diversion works in time of water shortage,~~
14-30 ~~as is necessary because of the rights existing in the streams of his~~
14-31 ~~segment or basin, or as is necessary to prevent the waste of water~~
14-32 ~~or its diversion, taking, storage, or use in excess of the~~
14-33 ~~quantities to which the holders of water rights are lawfully~~
14-34 ~~entitled; and~~

14-35 ~~[(3) perform any other duties and exercise any~~
14-36 ~~authority directed by the commission].~~

14-37 SECTION 27. Section 11.455, Water Code, is amended to read
14-38 as follows:

14-39 Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER
14-40 ~~[ASSESSMENTS].~~ (a) Section 11.329 applies to the payment of the
14-41 compensation and expenses of a watermaster appointed for a river
14-42 basin or segment of a river basin under this subchapter in the same
14-43 manner as that section applies to the payment of the compensation
14-44 and expenses of a watermaster appointed for a water division under
14-45 Subchapter G.

14-46 (b) The executive director shall deposit the assessments
14-47 collected under this section to the credit of the watermaster fund.

14-48 (c) Money deposited under this section to the credit of the
14-49 watermaster fund may be used only for the purposes specified by
14-50 Section 11.3291 with regard to the watermaster operation under this
14-51 subchapter with regard to which the assessments were collected ~~[The~~
14-52 ~~commission may assess the costs of the watermaster against all~~
14-53 ~~persons who hold water rights in the river basin or segment of the~~
14-54 ~~river basin under the watermaster's jurisdiction in accordance with~~
14-55 ~~Section 11.329 of this code].~~

14-56 SECTION 28. Subchapter F, Chapter 15, Water Code, is
14-57 amended by adding Section 15.4063 to read as follows:

14-58 Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may
14-59 authorize the use of money in the research and planning fund:

14-60 (1) to compensate the members of the Texas
14-61 Environmental Flows Science Advisory Committee established under
14-62 Section 11.02361 for attendance and participation at meetings of
14-63 the committee and for transportation, meals, lodging, or other
14-64 travel expenses associated with attendance at those meetings as
14-65 provided by the General Appropriations Act;

14-66 (2) for contracts with cooperating state and federal
14-67 agencies and universities and with private entities as necessary to
14-68 provide technical assistance to enable the Texas Environmental
14-69 Flows Science Advisory Committee and the basin and bay expert

science teams established under Section 11.02362 to perform their statutory duties;

(3) to compensate the members of the expert science teams created pursuant to Section 11.02362(i) for attendance and participation at meetings of the teams and for transportation, meals, lodging, or other travel expenses associated with attendance at those meetings as provided by the General Appropriations Act; and

(4) for contracts with political subdivisions designated as representatives of stakeholder committees established pursuant to Section 11.02362 to fund all or part of the administrative expenses for conducting meetings of the stakeholder committee or the associated expert science team.

SECTION 29. Section 15.7031, Water Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) The dedication of any water rights placed in trust must be reviewed and approved by the commission, in consultation with the board, ~~and~~ the Parks and Wildlife Department, and the Environmental Flows Commission. In addition, the Department of Agriculture and the basin and bay area stakeholders committee and basin and bay expert science team established under Section 11.02362 for the river basin and bay system to which the water right pertains may provide input to the commission, as appropriate, during the review and approval process for dedication of water rights.

(e) While a water right is held in the trust, the water authorized for beneficial use under the terms of the water right is considered to be held for instream flows, water quality, fish and wildlife habitat, bay and estuary inflows, or other environmental uses without the need for a permit amendment. After the water right is withdrawn in whole or in part from the trust, the use of the water right or portion of the water right withdrawn must be in accordance with the terms of the water right.

SECTION 30. Subsection (d), Section 16.059, Water Code, is amended to read as follows:

(d) The priority studies shall be completed not later than December 31, ~~2014~~ [2010]. The Parks and Wildlife Department, the commission, and the board shall establish a work plan that prioritizes the studies and that sets interim deadlines providing for publication of flow determinations for individual rivers and streams on a reasonably consistent basis throughout the prescribed study period. Before publication, completed studies shall be submitted for comment to the commission, the board, and the Parks and Wildlife Department.

SECTION 31. Subsection (h), Section 26.0135, Water Code, as amended by Chapters 234 and 965, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(h) The commission shall apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section from users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed. Irrigation water rights, ~~and~~ non-priority hydroelectric rights of a water right holder that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts, and water rights held in the Texas Water Trust for terms of at least 20 years will not be subject to this assessment. The cost to river authorities and others to conduct water quality monitoring and assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality monitoring, assessment, and associated costs. The rules shall ensure that water users and wastewater dischargers do not pay excessive amounts, that program funds are equitably apportioned among basins, that a river authority may recover no more than the actual costs of administering the water quality management programs called for in

16-1 this section, and that no municipality shall be assessed cost for
 16-2 any efforts that duplicate water quality management activities
 16-3 described in Section 26.177 ~~[of this chapter]~~. The rules
 16-4 concerning the apportionment and assessment of reasonable costs
 16-5 shall provide for a recovery of not more than \$5,000,000 annually.
 16-6 Costs recovered by the commission are to be deposited to the credit
 16-7 of the water resource management account and may be used only to
 16-8 accomplish the purposes of this section. The commission may apply
 16-9 not more than 10 percent of the costs recovered annually toward the
 16-10 commission's overhead costs for the administration of this section
 16-11 and the implementation of regional water quality assessments. The
 16-12 commission, with the assistance and input of each river authority,
 16-13 shall file a written report accounting for the costs recovered
 16-14 under this section with the governor, the lieutenant governor, and
 16-15 the speaker of the house of representatives on or before December 1
 16-16 of each even-numbered year.

16-17 SECTION 32. Subsections (d), (k), (l), and (m), Section
 16-18 11.0236, Subsection (c), Section 11.0237, and Subsection (b),
 16-19 Section 11.1491, Water Code, are repealed.

16-20 SECTION 33. The Study Commission on Water for Environmental
 16-21 Flows is abolished on the effective date of this Act.

16-22 SECTION 34. (a) The governor, lieutenant governor, and
 16-23 speaker of the house of representatives shall appoint the initial
 16-24 members of the Environmental Flows Commission as provided by
 16-25 Section 11.0236, Water Code, as amended by this Act, as soon as
 16-26 practicable on or after the effective date of this Act.

16-27 (b) As soon as practicable after taking office, the initial
 16-28 members of the Environmental Flows Commission shall appoint the
 16-29 initial members of the Texas Environmental Flows Science Advisory
 16-30 Committee as provided by Section 11.02361, Water Code, as added by
 16-31 this Act. The terms of the initial members of the committee expire
 16-32 March 1, 2010.

16-33 (c) The Environmental Flows Commission shall appoint the
 16-34 members of each basin and bay area stakeholders committee as
 16-35 provided by Section 11.02362, Water Code, as added by this Act. The
 16-36 terms of the initial members of each committee expire March 1 of the
 16-37 fifth year that begins after the year in which the initial
 16-38 appointments are made.

16-39 (d) Each basin and bay area stakeholders committee shall
 16-40 appoint the members of the basin and bay expert science team for the
 16-41 river basin and bay system for which the committee is established as
 16-42 provided by Section 11.02362, Water Code, as added by this Act. The
 16-43 terms of the initial members of each team expire April 1 of the
 16-44 fifth year that begins after the year in which the initial
 16-45 appointments are made.

16-46 (e) The executive director of the Texas Commission on
 16-47 Environmental Quality shall appoint the members of the watermaster
 16-48 advisory committee under Section 11.4531, Water Code, as added by
 16-49 this Act, for each river basin or segment of a river basin for which
 16-50 the executive director appoints a watermaster under Subchapter I,
 16-51 Chapter 11, Water Code. The terms of the initial members of each
 16-52 committee expire August 31 of the first odd-numbered year that
 16-53 begins after the year in which the initial appointments are made.

16-54 SECTION 35. The changes in law made by this Act relating to
 16-55 a permit for a new appropriation of water or to an amendment to an
 16-56 existing water right that increases the amount of water authorized
 16-57 to be stored, taken, or diverted apply only to:

16-58 (1) water appropriated under a permit for a new
 16-59 appropriation of water the application for which is pending with
 16-60 the Texas Commission on Environmental Quality on the effective date
 16-61 of this Act or is filed with the commission on or after that date; or

16-62 (2) the increase in the amount of water authorized to
 16-63 be stored, taken, or diverted under an amendment to an existing
 16-64 water right that increases the amount of water authorized to be
 16-65 stored, taken, or diverted and the application for which is pending
 16-66 with the Texas Commission on Environmental Quality on the effective
 16-67 date of this Act or is filed with the commission on or after that
 16-68 date.

16-69 SECTION 36. This Act takes effect September 1, 2005.

* * * * *

FAVORABLY AS SUBSTITUTED
SENATE COMMITTEE REPORT ON

(SB) SCR SJR SR AB HCR HJR 1512
By Amendt
(Author/Senate Sponsor)
5/17/05
(date)

We, your Committee on NATURAL RESOURCES, to which was referred the attached measure,
have on 5/11/05, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

☒ do pass as substituted, and be printed
☒ the caption remained the same as original measure
☐ the caption changed with adoption of the substitute

☐ do pass as substituted, and be ordered not printed

☒ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☒ yes ☐ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Armbrister, Chair	<input checked="" type="checkbox"/>			
Senator Jackson, Vice-Chair	<input checked="" type="checkbox"/>			
Senator Barrientos	<input checked="" type="checkbox"/>			
Senator Duncan			<input checked="" type="checkbox"/>	
Senator Estes	<input checked="" type="checkbox"/>			
Senator Fraser	<input checked="" type="checkbox"/>			
Senator Hinojosa	<input checked="" type="checkbox"/>			
Senator Lindsay	<input checked="" type="checkbox"/>			
Senator Madla	<input checked="" type="checkbox"/>			
Senator Seliger	<input checked="" type="checkbox"/>			
Senator Staples			<input checked="" type="checkbox"/>	
TOTAL VOTES	9	0	2	0

COMMITTEE ACTION

☒ 8260 Considered in public hearing
☐ 8270 Testimony taken

Wally C. Mellett
COMMITTEE CLERK

[Signature]
CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute
Retain one copy of this form for Committee files

BILL ANALYSIS

Senate Research Center
79R17021 SMH-F

C.S.S.B. 1512
By: Averitt
Natural Resources
5/14/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

C.S.S.B. is an omnibus clean-up bill for numerous provisions in Chapter 11, Water Code, related to the surface water resources of the state. The bill includes the provisions contained in Article 1 of C.S.S.B. 3, 79th Legislature, Regular Session, 2005, related to environmental flows.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Study Commission on Water for Environmental Flows is transferred to the Environmental Flows Commission and modified in SECTION 8 (Section 11.0236, Water Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 19 (Section 11.1471, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 5.506, Water Code, to read as follows:

Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES.

SECTION 2. Amends Section 5.506, Water Code, by adding Subsection (a-1) and amending Subsections (b) and (c), as follows:

(a-1) Authorizes state water that is set aside by the Texas Commission on Environmental Quality (TCEQ) to meet the needs for freshwater inflows to affected bays, estuaries, and instream uses under Section 11.1471(a)(2) to be made available temporarily for other essential beneficial uses if TCEQ finds that an emergency exists that cannot practically be resolved in another way.

(b) Requires TCEQ to give written notice of the proposed action, rather than suspension, to the Texas Parks and Wildlife Department (TPWD) before TCEQ suspends a permit condition under Subsection (a), rather than under this section, or makes water available temporarily under Subsection (a-1). Requires TCEQ to give TPWD an opportunity to submit comments on the proposed action, rather than suspension, for a period of 72 hours from receipt of the notice and requires TCEQ to consider those comments before issuing an order implementing the proposed action, rather than imposing suspension.

(c) Authorizes TCEQ to suspend a permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice except as required by Subsection (b).

SECTION 3. Amends Section 5.701(j), Water Code, to provide that a fee is not required for a water right that is deposited into the Texas Water Trust. Deletes existing text waiving a fee for applications for instream-use water rights deposited into the Texas Water Trust.

SECTION 4. Amends Section 11.002, Water Code, by amending Subdivision (1) to redefine "commission" and adding Subdivisions (7), (15), (16), (17), (18), and (19) to define "developed

water," "environmental flow analysis," "environmental flow regime," "environmental flow standards," "flows commission," and "science advisory committee."

SECTION 5. Amends Sections 11.023(a) and (e), Water Code, as follows:

(a) Authorizes state water to be appropriated, stored, or diverted for specific uses, to the extent that state water has not been set aside by TCEQ under Section 11.1471(a)(2) to meet downstream instream flow needs or freshwater inflow needs.

(e) Requires the amount of water appropriated for each purpose mentioned in this section to be specifically appropriated, stored, or diverted, rather than just appropriated, for that purpose.

SECTION 6. Amends Section 11.0235, Water Code, by amending Subsections (c) and (e) and adding Subsections (d-1), (d-2), (d-3), (d-4), (d-5), and (f), as follows:

(c) Provides that the legislature has expressly required TCEQ, while balancing all other public interests to consider and, to the extent practicable, provide for the freshwater inflows and instream flows necessary to maintain the viability of the state's streams, rivers, bay, and estuary systems in TCEQ's regular granting of permits for the use of state waters. Requires all permit conditions relating to freshwater inflows to affected bays, estuaries, and instream flow needs, as an essential part of the state's environmental flows policy, to be subject to temporary suspension if necessary for water to be applied to essential beneficial uses during emergencies.

(d-1) Requires the state to have a process with specific timelines for prompt action to address environmental flow issues in the state's major basin and bay systems, especially those systems in which unappropriated water is still available, based on legislative findings that provide certainty in water management and development and provide adequate protection of the state's streams, rivers, bays, and estuaries.

(d-2) Sets forth legislative findings regarding basins in which water is available for appropriation and those in which the unappropriated water will be set aside for instream flow and freshwater inflow protection and recommendations for TCEQ's plan of action.

(d-3) Sets forth legislative findings regarding limitations on freshwater inflow needs for bays and estuaries, proposed state improvements, and more extensive reviews and examinations of program details.

(d-4) Sets forth legislative findings regarding the management of water to meet instream flow and freshwater inflow needs, to be evaluated on a regular basis and adapted to reflect scientific improvements and future changes, and the development of management strategies for specific environmental flow needs.

(d-5) Sets forth legislative findings regarding recommendations for state action to protect instream flows and freshwater inflows through a regional consensus-based approach involving balanced representation throughout the state.

(e) Provides that pressures and demands on water resources require priorities to be effectively addressed by detailing the manner in which environmental flow standards are to be developed using the environmental studies and determine the manner in which those standards will be integrated into the regional water planning and water permitting process.

(f) Sets forth legislative acknowledgement of the need for effective implementation of the approach provided by this chapter in order to protect instream flows and freshwater inflows, thus requiring more effective water rights administration and enforcement systems than currently available.

SECTION 7. Amends the heading to Section 11.0236, Water Code, to read as follows:

Sec. 11.0236. ENVIRONMENTAL FLOWS COMMISSION.

SECTION 8. Amends Section 11.0236, Water Code, by amending Subsections (a)-(c), (e)-(j), (n), and (o), and adding Subsection (p), as follows:

- (a) Sets forth the creation of the Environmental Flows Commission (flows commission), in place of the Study Commission on Water for Environmental Flows (study commission).
- (b) Sets forth members of the flows commission. Deletes existing text regarding additional members serving on the study commission.
- (c) Sets forth requirements for members appointed to positions by the governor. Deletes existing text regarding additional requirements for membership.
- (e) Provides that each member, rather than appointed member, of the flows commission serves at the will of the person who appointed the member. Makes a conforming change.
- (f) through (i) Make conforming changes.
- (j) Requires the flows commission, in evaluating the options for providing adequate environmental flows, to take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers, rather than parks and game preserves, and bay and estuary systems and are high priorities in the water management process, rather than the permitting process. Requires the flows commission to specifically address ways that the ecological soundness of those systems will be ensured in the water administration, enforcement, and allocation process, rather than just in the water allocation process, and appropriate methods to encourage persons voluntarily to convert reasonable amounts of existing water rights to use for environmental flow protection, temporarily or permanently. Makes conforming and nonsubstantive changes.
- (n) Authorizes, rather than requires, the flows commission to adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362.
- (o) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of the flows commission.
- (p) Requires the flows commission to issue and promptly deliver to specific government officials, not later than December 1, 2006, and every two years thereafter, copies of a report summarizing specific hearings, proposed legislation, progress made in the implementation of Sections 11.02361 and 11.02362, and any other findings and recommendations of the flows commission. Deletes existing text abolishing the study commission and providing for the expiration of this section.

SECTION 9. Amends Subchapter B, Chapter 11, Water Code, by adding Sections 11.02361 and 11.02362, as follows:

Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY COMMITTEE. (a) Provides that the Texas Environmental Flows Science Advisory Committee (science advisory committee) consists of at least five but not more than nine members appointed by the flows commission.

(b) Requires the flows commission to appoint to the science advisory committee persons who will provide an objective perspective and diverse technical experience in specific fields pertinent to the evaluation of environmental flows.

(c) Provides that members of the science advisory committee serve five-year terms expiring March 1. Provides that a vacancy on the science advisory

committee is filled by appointment by the co-presiding officers of the flows commission for the unexpired term.

(d) Provides that Chapter 2110, Government Code, does not apply to the size, composition, or duration of the science advisory committee.

(e) Requires the science advisory committee to serve as an independent scientific body to advise and make recommendations to the flows commission on issues relating to the science of environmental flow protection and develop recommendations to help provide overall direction, coordination, and consistency relating to specific issues concerning environmental flows.

(f) Requires TCEQ, TPWD, and the Texas Water Development Board (TWDB), to assist the flows commission in assessing the extent to which the recommendations of the science advisory committee are considered and implemented, to provide written reports to the flows commission, at intervals determined by the flows commission, that describe the actions taken by each agency in response to each recommendation, those recommendations not implemented, and reasons for it not being implemented.

Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME RECOMMENDATIONS. (a) Requires the flows commission, no later than November 1, 2005, and for the purposes of this section, to define the geographical extent of each river basin and bay system in the state for the purpose of developing environmental flow regime recommendations under this section and adoption of environmental flow standards under Section 11.1471.

(b) Requires the flows commission to give priority in descending order to the following river basin and bay systems of the state for the purpose of developing environmental flow regime recommendations and adopting environmental flow standards:

(1) the river basin and bay system consisting of the Trinity and San Jacinto Rivers and Galveston Bay and the river basin and bay system consisting of the Sabine and Neches Rivers and Sabine Lake Bay,

(2) the river basin and bay system consisting of the Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the river basin and bay system consisting of the Guadalupe, San Antonio, and Aransas Rivers, and Copano, Aransas, and San Antonio Bays; and

(3) the river basin and bay system consisting of the Nueces River and Corpus Christi and Baffin Bays, the river basin and bay system consisting of the Rio Grande, the Rio Grande estuary, the Lower Laguna Madre, and the Brazos River and its associated bay and estuary system.

(c) Requires that for the river basin and bay systems listed in Subsection (b)(1):

(1) the flows commission appoint the basin and bay area stakeholders committee not later than November 1, 2005;

(2) the basin and bay area stakeholders committee establish a basin and bay expert science team not later than March 1, 2006;

(3) the basin and bay expert science team finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the flows commission, and TCEQ not later than March 1, 2007;

(4) the basin and bay area stakeholders committee submit to TCEQ its comments on and recommendations regarding the basin and bay expert

science team's recommended environmental flow regime not later than September 1, 2007; and

(5) TCEQ adopt the environmental flow standards as provided by Section 11.1471 not later than September 1, 2008.

(d) Requires the flows commission to appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(2), no later than September 1, 2006, and those river basin and bay systems listed in Subsection (b)(3) no later than September 1, 2007. Requires the flows commission to establish a schedule for the performance of the tasks listed in Subsection (c)(2)-(5) with regard to the river basin and bay systems listed in Subsection (b)(2) and (3) that will result in the adoption of environmental flow standards for that river basin and bay system by TCEQ, as soon as is reasonably possible. Requires each basin and bay area stakeholders committee and basin and bay expert science team for a river basin and bay system listed in Subsection (b)(2) or (3) to make recommendations to the flows commission with regard to the schedule applicable to that river basin and bay system. Requires the flows commission to consider the recommendations of the basin and bay area stakeholders committee and basin and bay expert science team, as well as coordinate with, and give appropriate consideration to the recommendations of, TCEQ, TPWD, and the TWDB in establishing the schedule.

(e) Requires the flows commission, for a river basin and bay system or a river basin that does not have an associated bay system in this state not listed in Subsection (b), to establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards. Requires the flows commission to develop the schedule in consultation with TCEQ, TPWD, TWDB, and the pertinent basin and bay area stakeholders committee and basin and bay expert science team. Authorizes the flows commission, on its own initiative or on request, to modify a schedule established under this subsection to be more responsive to particular circumstances, local desires, changing conditions, or time-sensitive conflicts. Provides that this subsection does not prohibit an effort to develop information on environmental flow needs and ways in which those needs can be met by a voluntary consensus-building process, in a river basin and bay system for which the flows commission has not yet established a schedule for the development of environmental flow regime recommendations.

(f) Requires the flows commission to appoint a basin and bay area stakeholders committee for each river basin and bay system in this state for which a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards is specified by or established under Subsection (c), (d), or (e). Provides that Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay area stakeholders committee. Requires each committee to consist of at least 17 specific members representing appropriate enumerated stakeholders.

(g) Provides that members of a basin and bay area stakeholders committee serve five-year terms expiring March 1. Requires the remaining members of the committee, if a vacancy occurs on a committee, to appoint a member to serve the remainder of the unexpired term by majority vote.

(h) Requires meetings of the basin and bay area stakeholders committee to be open to the public.

(i) Requires each basin and bay area stakeholders committee to establish a basin and bay expert science team for the river basin and bay system for which the committee is established. Requires establishment of the basin and bay expert science team within six months of committee establishment. Provides that Chapter 2110, Government Code, does not apply to the size, composition, or

duration of a basin and bay expert science team. Requires each basin and bay expert science team to be composed of technical experts with special expertise in the river basin and bay system or regarding the development of environmental flow regimes. Authorizes a person to serve as a member of more than one basin and bay expert science team at the same time.

(j) Provides that the members of the basin and bay expert science team serve five-year terms expiring April 1. Provides that a vacancy on a basin and bay expert science team is filled by appointment by the pertinent basin and bay area stakeholders committee to serve the remainder of the unexpired term.

(k) Requires the science advisory committee to appoint one of its members to serve as a liaison to each basin and bay expert science team to facilitate coordination and consistency in environmental flow activities throughout the state. Requires TCEQ, TPWD, and TWDB to provide technical assistance to each basin and bay expert science team including information about the studies conducted under Sections 16.058 (Collection of Bays and Estuaries Data: Conduct of Studies) and 16.059 (Collection of Instream Flow Data: Conduct of Studies), and authorizes them to serve as nonvoting members of the basin and bay expert science team to facilitate the development of environmental flow regime recommendations.

(l) Requires meetings of a basin and bay expert science team, where reasonably practicable, to be open to the public.

(m) Requires each basin and bay expert science team to develop environmental flow analyses and a recommended environmental flow regime for the river basin and bay system for which the team is established through a collaborative process designed to achieve a consensus. Requires the science team, in developing the analyses and recommendations, to consider all reasonably available science, without regard to the need for the water for other uses, and requires the recommendations to be based solely on the best science available.

(n) Requires each basin and bay expert science team to submit its environmental flow analyses and environmental flow regime recommendations to the pertinent basin and bay area stakeholders committee, the flows commission, and TCEQ in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). Prohibits the basin and bay area stakeholders committee and flows committee from changing the environmental flow analyses or environmental flow regime recommendations of the basin and bay expert science team.

(o) Requires each basin and bay area stakeholders committee to review the environmental flow analyses and environmental flow regime recommendations submitted by the committee's basin and bay expert science team and consider them in conjunction with other factors, including the present and future needs for water for other uses related to water supply planning in the pertinent river basin and bay system. Requires the basin and bay area stakeholders committee to develop recommendations regarding environmental flow standards and strategies to meet the environmental flow standards and submit those recommendations to TCEQ and to the flows commission in accordance with the applicable schedule specified or established under Subsection (c), (d), or (e). Requires the basin and bay area stakeholders, in developing its recommendations, to operate on a consensus basis to the maximum extent possible.

(p) Requires each basin and bay area stakeholder committee, with the assistance of the pertinent basin and bay expert science team, in recognition of the importance of adaptive management, after submitting its recommendations regarding environmental flow standards and strategies to meet the environmental flow standards to TCEQ, to prepare and submit a work plan for approval by the flows commission. Sets forth content requirements for the work plan.

(q) Requires the flows commission, with input from the science advisory committee, in accordance with the applicable schedule specified or established under Subsection (c), (d), or (e), to review the environmental flow analyses and environmental flow regime recommendations submitted by each basin and bay expert science team. Requires the flows commission, if appropriate, to submit comments on the analyses and recommendations to TCEQ for use by TCEQ in adopting rules under Section 11.1471. Requires comments to be submitted not later than six months after the date of receipt of the recommendations.

(r) Authorizes an estuary advisory council, in the event TCEQ, by permit or order, has established said council, to continue in full force and effect.

SECTION 10. Amends Sections 11.0237(a) and (b), Water Code, to authorize TCEQ to approve an application to amend an existing permit or certificate of adjudication to change the use or to add a use for instream flows dedicated to environmental needs of bay and estuary flows. Provides that in addition to specific sections previously listed, this section does not alter TCEQ's obligations under Sections 11.042(c), 11.1471, 11.150, and 11.152. Deletes existing text providing that this section does not prohibit TCEQ from issuing an amendment to an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

SECTION 11. Amends Section 11.042(b), Water Code, to require a person who wishes to discharge and then subsequently divert and reuse the person's existing return flows derived from developed water, rather than privately owned groundwater, to obtain prior authorization from TCEQ.

SECTION 12. Amends Section 11.082(b), Water Code, to authorize the state to seek those penalties [described in Subsection (a)] regardless of whether a watermaster has been appointed for the water division, river basin, or segment of a river basin where the unlawful use [of state water] is alleged to have occurred. Makes a nonsubstantive change.

SECTION 13. Amends Section 11.0841, Water Code, by adding Subsection (c), as follows:

(c) Provides that for purposes of this section, TPWD has:

- (1) the rights of a holder of a water right that is held in the Texas Water Trust, including the right to file suit in a civil court to prevent the unlawful use of such a right; and
- (2) the right to act in the same manner that a holder of a water right may act to protect the holder's rights in seeking to prevent any person from appropriating water in violation of a set-aside established by the commission under Section 11.1471 to meet instream flow needs or freshwater inflow needs; and
- (3) the right to file suit in a civil court to prevent the unlawful use of a set-aside established under Section 11.1471.

SECTION 14. Amends Section 11.0842(a), Water Code, to authorize TCEQ to assess an administrative penalty for a violation relating to a water division or a river basin or segment of a river basin regardless of whether a watermaster has been appointed for the water division or river basin or segment of the river basin. Makes a nonsubstantive change.

SECTION 15. Amends Section 11.0843(a), Water Code, to authorize the executive director of TCEQ, or a person designated by the executive director, including a watermaster or the watermaster's deputy, upon witnessing a violation of this chapter, a rule, order, or a water right issued under this chapter, to issue the alleged violator a filed citation alleging that a violation has occurred and providing the alleged violator with specific options. Makes nonsubstantive changes.

SECTION 16. Amends Section 11.126(c), Water Code, to specify that the height of a dam is measured from the channel invert elevation to the top of the dam.

SECTION 17. Amends Section 11.134(b), Water Code, to require TCEQ to grant the application only if the proposed appropriation considers any applicable environmental flow standards established under Section 11.1471. Makes a nonsubstantive change.

SECTION 18. Amends Section 11.147, Water Code, by amending Subsections (b), (d), and (e) and adding Subsections (e-1) and (e-2), as follows:

(b) Requires TCEQ, for permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, to include in the permit any conditions considered necessary to maintain freshwater inflows to any affected bay and estuary system, to the extent practicable when considering all public interests and the studies mandated by Section 16.058 as evaluated under Section 11.1491. Deletes existing text regarding conditions necessary to maintain beneficial inflows.

(d) Requires TCEQ, in determining what conditions to include in the permit under this subsection, to consider the studies mandated by Section 16.059 and any water quality assessment performed under Section 11.150.

(e) Requires TCEQ, in determining what conditions to include in the permit under this subsection, to consider any assessment performed under Section 11.152.

(e-1) Requires any permit for a new appropriation of water or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted to include a provision allowing TCEQ to adjust the conditions included in the permit or water right to provide for protection of instream flows or freshwater inflows. Prohibits the provision, with respect to an amended water right, from allowing TCEQ to adjust a condition of the amendment other than a condition that applies only to the increase in the amount of water to be stored, taken, or diverted authorized by amendment. Provides that this subsection does not affect an appropriation of or an authorization to store, take, or divert water under a permit or amendment to a water right issued before September 1, 2005. Requires TCEQ to adjust the conditions upon determining, through an expedited public comment process, that such an adjustment is appropriate to achieve compliance with applicable environmental flow standards adopted under Section 11.1471. Provides that the adjustment:

(1) in combination with any previous adjustments made under this subsection, is prohibited from increasing the amount of the pass-through or release requirement for the protection of instream flows or freshwater inflows by more than 12.5 percent of the annualized total of that requirement contained in the permit as issued or the water right amended;

(2) is required to be based on appropriate consideration of the priority dates and diversion locations of any other water rights grants in the same river basin that are subject to adjustment under this subsection; and

(3) is required to be based on appropriate consideration of any voluntary contributions to the Texas Water Trust that contribute toward meeting the environmental flows standards. Requires any water right holder making such a donation to be entitled to appropriate credit of such benefits against adjustment of his water right pursuant to Subdivision (1).

(e-2) Requires TCEQ, notwithstanding Subsections (b)-(e), for the purpose of determining the environmental flow conditions necessary to maintain freshwater inflows to an affected bay and estuary system, existing instream uses and water quality of a stream or river, or fish and aquatic wildlife habitats, to apply any applicable environmental flow standard, including environmental flow set-aside, adopted under Section 11.1471 instead of considering the factors specified by those subsections.

SECTION 19. Amends Subchapter D, Chapter 11, Water Code, by adding Section 11.1471, as follows:

Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES. (a) Requires TCEQ, by rule, to:

- (1) adopt appropriate environmental flow standards for each river basin and bay system in this state that are adequate to support a sound ecological environment, to the maximum extent reasonable considering other public interests and other relevant factors;
 - (2) establish an amount of unappropriated water, if available, to be set aside to satisfy the environmental flow standards to the maximum extent reasonable when considering human water needs; and
 - (3) establish procedures for implementing an adjustment of the conditions included in a permit or an amended water right as provided by Section 11.147(e-1).
- (b) Requires TCEQ, in adopting environmental flow standards for a river basin and bay system under Subsection (a)(1), to consider specific factors regarding the definition of the geographical extent of the river basin and bay system, schedule for the adoption of environmental flow standards, the environmental flow analyses and the recommended environmental flow regime developed by the applicable basin and bay expert science team, recommendations and strategies, specific characteristics of the river basin and bay system, economic factors, the human and other competing water needs in the river basin and bay system, reasonably available scientific information, and any other appropriate information.
- (c) Requires environmental flow standards adopted under Subsection (a)(1) to consist of a schedule of flow quantities, reflecting seasonal and yearly fluctuations that may vary geographically by specific location in a river basin and bay system.
- (d) Prohibits TCEQ, as provided by Section 11.023, from issuing a permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted if the issuance of the permit or amendment would impair an environmental flow set-aside established under Subsection (a)(2). Requires a permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted that is issued after the adoption of an applicable environmental flow set-aside to contain appropriate conditions to ensure protection of the environmental flow set-aside.
- (e) Requires an environmental flow set-aside established under Subsection (a)(2) to be assigned a priority date corresponding to the date TCEQ receives environmental flow regime recommendations from the applicable basin and bay expert science team and be included in the appropriate water availability models in connection with an application for a permit for a new appropriation or for an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted.
- (f) Authorizes an environmental flow standard or environmental flow set-aside adopted under Subsection (a) to be altered by TCEQ in a rulemaking process undertaken in accordance with a schedule established by TCEQ. Prohibits TCEQ's schedule from providing for the rulemaking process to occur more frequently than once every 10 years unless the applicable work plan approved by the flows commission under Section 11.02362(p) provides for a periodic review under that section to occur more frequently. Authorizes TCEQ, in that event, to provide for the rulemaking process to be undertaken in conjunction with the periodic review upon determining that schedule to be appropriate.

SECTION 20. Amends the heading to Section 11.148, Water Code, to read as follows:

Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR ENVIRONMENTAL FLOWS.

SECTION. 21. Amends Section 11.148, Water Code, by adding Subsection (a-1) and amending Subsections (b) and (c), as follows:

(a-1) Authorizes state water that is set aside by TCEQ to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) to be made available temporarily for other essential beneficial uses, if TCEQ finds that an emergency exists that cannot practically be resolved in another way.

(b) Requires TCEQ, before suspending a permit condition under Subsection (a) or making water available temporarily under Subsection (a-1), to give written notice to TPWD of the proposed action, rather than suspension. Requires TCEQ to give TPWD an opportunity to submit comments on the proposed action within 72 hours from the time TCEQ is required to consider those comments before issuing its order implementing the proposed action. Makes conforming changes.

(c) Authorizes TCEQ to suspend the permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice to any other interested party other than TPWD as provided by Subsection (b).

SECTION 22. Amends Section 11.1491(a), Water Code, to require publication of reports completed under this section to be submitted for comment to TCEQ, TPWD, the flows commission, the science advisory committee, and any applicable basin and bay area stakeholders committee and basin and bay expert science team. Makes conforming and nonsubstantive changes.

SECTION 23. Amends Section 11.329(g), Water Code, to prohibit TCEQ from assessing costs under this section against a holder of a water right placed in the Texas Water Trust for a term of at least 20 years. Deletes existing text regarding this subsection affecting the fees assessed on a water right holder by TCEQ under specific chapters.

SECTION 24. Amends Section 11.404(e), Water Code, to prohibit the court from assessing costs and expenses under this section against a holder of a water right placed in the Texas Water Trust for a term of at least 20 years.

SECTION 25. Amends Subchapter I, Chapter 11, Water Code, by adding Section 11.4531, as follows:

Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) Requires the executive director of TCEQ, for each river basin or segment of a river basin for which the executive director appoints a watermaster under this subchapter, to appoint a watermaster advisory committee consisting of at least nine but not more than 15 members. Requires a member of the advisory committee to be a holder of a water right or a representative of a holder of a water right in the river basin or segment of the river basin for which the watermaster is appointed. Requires the executive director, in appointing members to the advisory committee, to consider geographic representation, amount of water rights held, different types of holders of water rights and users, including water districts, municipal suppliers, irrigators, and industrial users, and experience and knowledge of water management practices.

(b) Provides that an advisory committee member is not entitled to reimbursement of expenses or to compensation.

(c) Provides that an advisory committee member serves a two-year term expiring August 31 of each odd-numbered year and holds office until a successor is appointed.

(d) Requires the advisory committee to meet within 30 days after the date the initial appointments have been made and to select a presiding officer to serve a one-year term. Requires the committee to meet regularly as necessary.

(e) Requires the advisory committee to make specific recommendations, reviews, and comments, and perform other advisory duties to the executive director of TCEQ.

SECTION 26. Amends Section 11.454, Water Code, as follows:

Sec. 11.454. **DUTIES AND AUTHORITY OF THE WATERMASTER.** Provides that Section 11.327 applies to the duties and authority of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as the section applies to the duties and authority of a watermaster appointed for a water division under Subchapter G. Deletes existing text of this section.

SECTION 27. Amends Section 11.455, Water Code, as follows:

Sec. 11.455. New heading: **COMPENSATION AND EXPENSES OF WATERMASTER.** (a) Provides that Section 11.329 applies to the payment of the compensation and expenses of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as that section applies to the payment of the compensation and expenses of a watermaster appointed for a water division under Subchapter G.

(b) Requires the executive director of TCEQ to deposit the assessments collected under this section to the credit of the watermaster fund.

(c) Authorizes money deposited under this section to the credit of the watermaster fund to be used only for the purposes specified by Section 11.3291 with regard to the watermaster operation under this subchapter with regard to which the assessments were collected.

Deletes existing text of this section regarding assessments.

SECTION 28. Amends Subchapter F, Chapter 15, Water Code, by adding Section 15.4063, as follows:

Sec. 15.4063. **ENVIRONMENTAL FLOWS FUNDING.** Authorizes TWDB to authorize the use of money in the research and planning fund for specific compensations and contracts.

SECTION 29. Amends Section 15.7031, Water Code, by amending Subsection (c) and adding Subsection (e), as follows:

(c) Requires the dedication of any water rights placed in trust to be reviewed and approved by TCEQ, in consultation with certain entities including the flows commission. Authorizes the Department of Agriculture and the basin and bay area stakeholders committee and basin and bay expert science team established under Section 11.02362 for the river basin and bay system to which the water right pertains, rather than just the Department of Agriculture, to provide input to TCEQ, as appropriate, during the review and approval process for dedication of water rights.

(e) Provides that while a water right is held in the trust, the water authorized for beneficial use under the terms of the water right is considered to be held for instream flows, water quality, fish and wildlife habitat, bay and estuary inflows, or other environmental uses without the need for a permit amendment. Requires the use of the

water right or portion of the water right withdrawn, after the water right is withdrawn in whole or in part from the trust, to be in accordance with the terms of the water right.

SECTION 30. Amends Section 16.059(d), Water Code, to require the priority studies to be completed not later than December 31, 2014, rather than 2010.

SECTION 31. Reenacts and amends Section 26.0135(h), Water Code, as amended by Chapters 234 and 965, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(h) Provides that water rights held in the Texas Water Trust for terms of at least 20 years will not be subject to the assessment [to recover the costs of administering water quality management programs]. Makes nonsubstantive changes.

SECTION 32. Repealer: Sections 11.0236(d) (referring to member appointments under Subsection (b)(3); (k) (referring to duties of study commission); (l) (referring to study commission's report summary); (m) (referring to delivery of copies to members of the legislature); Section 11.0237(c) (referring to expiration date of section); and Section 11.1491(b) (referring to creation and establishment of advisory council for data collection and studies), Water Code.

SECTION 33. Abolishes the Study Commission on Water for Environmental Flows on the effective date of this Act.

SECTION 34. (a) Requires the governor, lieutenant governor, and speaker of the house of representatives to appoint the initial members of the Environmental Flows Commission as provided by Section 11.0236, Water Code, as amended by this Act, as soon as practicable on or after the effective date of this Act.

(b) Requires the initial members of the Environmental Flows Commission, as soon as practicable after taking office, to appoint the initial members of the Texas Environmental Flows Science Advisory Committee as provided by Section 11.02361, Water Code, as added by this Act. Provides that the terms of the initial members of the committee expire on March 1, 2010.

(c) Requires the Environmental Flows Commission to appoint the members of each basin and bay area stakeholders committee as provided by Section 11.02362, Water Code, as added by this Act. Provides that the terms of the initial members of each committee expire March 1 of the fifth year that begins after the year in which the initial appointments are made.

(d) Requires each basin and bay area stakeholders committee to appoint the members of the basin and bay expert science team for the river basin and bay system for which the committee is established as provided by Section 11.02362, Water Code, as added by this Act. Provides that the terms of the initial members of each committee expire March 1 of the fifth year that begins after the year in which the initial appointments are made.

(e) Requires the executive director of TCEQ to appoint the members of the watermaster advisory committee under Section 11.4531, Water Code, as added by this Act, for each river basin or segment of a river basin for which the executive director appoints a watermaster under Subchapter I, Chapter 11, Water Code. Provides that the terms of the initial members of the committee expire August 31 of the first odd-numbered year that begins after the year in which the initial appointments are made.

SECTION 35. Provides that the changes in law made by this article relating to a permit for a new appropriation of water or to an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted apply to a permit or amendment for which an application is pending with TCEQ on the effective date of this article or is filed with TCEQ on or after that date.

SECTION 36. Effective date: September 1, 2005.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 16, 2005

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB1512 by Averitt (Relating to the use and management of surface water resources.),
Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for SB1512, Committee Report 1st House, Substituted: a negative impact of (\$3,422,366) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	(\$1,577,433)
2007	(\$1,844,933)
2008	(\$2,013,433)
2009	(\$2,001,933)
2010	(\$2,013,433)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	(\$1,577,433)	8.0
2007	(\$1,844,933)	11.0
2008	(\$2,013,433)	14.0
2009	(\$2,001,933)	14.0
2010	(\$2,013,433)	14.0

Fiscal Analysis

The bill would provide that existing water rights could be converted temporarily or permanently to use for environmental flow protection. The bill would replace the Study Commission on Water for Environmental Flows to the Texas Environmental Flows Commission (TEFC). The TCEQ would continue to provide staff support to the modified TEFC. The TEFC would develop flow regime recommendations based on a priority schedule by river basin. The bill would create the Texas Environmental Flows Science Advisory Committee (TEFSAC) and the Basin and Bay Area Stakeholders Committee (BBASC). The TCEQ, the Texas Water Development Board (TWDB), and the Texas Parks and Wildlife Department (TPWD) would be responsible for coordinating with the TEFC, TEFSAC, and the BBASC, providing reports regarding the groups' recommendations, and providing technical assistance.

The bill would allow the TWDB to use money in the research and planning fund of the Water Assistance Fund No. 480 to compensate members of the TEFSAC and the Bay and Basin Expert Science Teams (BBEST) for meeting expenses. It would also allow the TWDB to pay contract costs for technical assistance to TFEC advisory committees and the BBESTs and costs incurred by political subdivisions designated as representatives of the BBASC.

Methodology

To provide technical support to the committees established in the bill, complete hydrological modeling, geographic information systems applications related to instream flows, and to evaluate economic factors, 6.0 additional FTEs and related costs are expected to be needed by the TCEQ. In addition, the TCEQ would have contract service costs of \$250,000 per year to upgrade and maintain water availability models. Total costs for the TCEQ would range from a high of \$718,433 in fiscal year 2006 to \$414,933 in later years.

The TWDB also expects to need additional staff and related costs to provide data and expertise to the committees established in the bill, as well as funding for costs incurred by the TEFSAC, BBEST, as well as administrative costs for designated political subdivisions and studies relating to bays and estuaries. The agency expects that the number of FTEs needed would increase from 2.0 in fiscal year 2006 to 8.0 FTEs in fiscal year 2008. Total costs to implement the bill would range from \$859,000 in fiscal year 2006 to \$1,598,500 in fiscal year 2010.

No significant fiscal implications to the TPWD are anticipated to result from the bill's provisions relating to the agency's coordination with newly created councils and committees.

Local Government Impact

Councils and committee created, expanded or modified by the bill could incur administrative costs. However, these costs are not expected to be significant, since state agencies are required to provide technical and staff support to these entities.

Source Agencies: 580 Water Development Board, 582 Commission on Environmental Quality

LBB Staff: JOB, SD, WK, ZS, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 10, 2005

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB1512 by Averitt (Relating to the use and management of surface water resources.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would define "developed water" to be water not in the watercourse or stream but for the efforts of the developer and which is intended for subsequent diversion and use by the developer. The definition would apply to groundwater and surface water which has been conveyed from another basin, another state, or the bays and arms of the Gulf of Mexico. The bill's passage is not expected to result in significant fiscal implications to state agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, WK, ZS, TL

REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that SB1512, by Ament,
(Bill No.) (Author/Sponsor)
was heard by the Committee on Natural Resources on 3/1/05,
2005,

and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Wally C. Ament
(Clerk of the reporting committee)

IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A COMMITTEE PRINTED VERSION OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.

ADOPTED

as amended
MAY 20 2005

31-9
Atty. Gen.
Secretary of the Senate

By: Averitt

S.B. No. 1512

Substitute the following for ____B. No. ____:

By: [Signature]

C.S. S B. No. 1512

A BILL TO BE ENTITLED

AN ACT

relating to the use and management of surface water resources.

and regional water
planning

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 5.506, Water Code, is amended to read as follows:

Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES.

SECTION 2. Section 5.506, Water Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) The commission must give written notice of the proposed action [~~suspension~~] to the Parks and Wildlife Department before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1) [~~this section~~]. The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed action

1 ~~[suspension]~~ for a period of 72 hours from receipt of the notice and
2 must consider those comments before issuing an order implementing
3 the proposed action ~~[imposing the suspension]~~.

4 (c) The commission may suspend a permit condition under
5 Subsection (a) or make water available temporarily under Subsection
6 (a-1) ~~[this section]~~ without notice except as required by
7 Subsection (b).

8 SECTION 3. Subsection (j), Section 5.701, Water Code, is
9 amended to read as follows:

10 (j) The fee for other uses of water not specifically named
11 in this section is \$1 per acre-foot, except that no political
12 subdivision may be required to pay fees to use water for recharge of
13 underground freshwater-bearing sands and aquifers or for abatement
14 of natural pollution. A fee is not required for a water right that
15 is ~~[This fee is waived for applications for instream-use water~~
16 ~~rights]~~ deposited into the Texas Water Trust.

17 SECTION 4. Section 11.002, Water Code, is amended by
18 amending Subdivision (1) and adding Subdivisions ~~(7)~~ (15), (16),
19 (17), (18), and (19) to read as follows:

20 (1) "Commission" means the Texas ~~[Natural Resource~~
21 ~~Conservation]~~ Commission on Environmental Quality.

22 (7) "Developed water" means:

23 (A) groundwater that is in a watercourse or
24 stream, that would not be in the watercourse or stream but for the
25 efforts of the developer, and that is intended for subsequent
26 diversion and use by the developer;

27 (B) surface water obtained through an approved

1 ~~interbasin transfer of water that is in a watercourse or stream,~~
2 ~~that would not be in the watercourse or stream but for the efforts~~
3 ~~of the developer, and that is intended for subsequent diversion and~~
4 ~~use by the developer;~~

5 ~~(C) waters imported from another state; or~~

6 ~~(D) waters originating in the bays or arms of the~~
7 ~~Gulf of Mexico.~~

8 (15) "Environmental flow analysis" means the
9 application of a scientifically derived process for predicting the
10 response of an ecosystem to changes in instream flows or freshwater
11 inflows.

12 (16) "Environmental flow regime" means a schedule of/ 2/3
13 flow quantities that reflects seasonal and yearly fluctuations that
14 typically would vary geographically, by specific location in a
15 watershed, and that are shown to be adequate to support a sound
16 ecological environment and to maintain the productivity, extent,
17 and persistence of key aquatic habitats in and along the affected
18 water bodies.

19 (17) "Environmental flow standards" means those
20 requirements adopted by the commission under Section 11.1471.

21 (18) "Flows commission" means the Environmental Flows
22 Commission.

23 (19) "Science advisory committee" means the Texas
24 Environmental Flows Science Advisory Committee.

25 SECTION 5. Subsections (a) and (e), Section 11.023, Water
26 Code, are amended to read as follows:

27 (a) To the extent that state water has not been set aside by

1 the commission under Section 11.1471(a)(2) to meet downstream
2 instream flow needs or freshwater inflow needs, state ~~[State]~~ water
3 may be appropriated, stored, or diverted for:

4 (1) domestic and municipal uses, including water for
5 sustaining human life and the life of domestic animals;

6 (2) agricultural uses and industrial uses, meaning
7 processes designed to convert materials of a lower order of value
8 into forms having greater usability and commercial value, including
9 the development of power by means other than hydroelectric;

10 (3) mining and recovery of minerals;

11 (4) hydroelectric power;

12 (5) navigation; / 3/4

13 (6) recreation and pleasure;

14 (7) public parks; and

15 (8) game preserves.

16 (e) The amount of water appropriated for each purpose
17 mentioned in this section shall be specifically appropriated,
18 stored, or diverted for that purpose, subject to the preferences
19 prescribed in Section 11.024 of this code. The commission may
20 authorize appropriation of a single amount or volume of water for
21 more than one purpose of use. In the event that a single amount or
22 volume of water is appropriated for more than one purpose of use,
23 the total amount of water actually diverted for all of the
24 authorized purposes may not exceed the total amount of water
25 appropriated.

26 SECTION 6. Section 11.0235, Water Code, is amended by
27 amending Subsections (c) and (e) and adding Subsections (d-1)

1 through (d-5) and (f) to read as follows:

2 (c) The legislature has expressly required the commission
3 while balancing all other public interests to consider and, to the
4 extent practicable, provide for the freshwater inflows and instream
5 flows necessary to maintain the viability of the state's streams,
6 rivers, and bay and estuary systems in the commission's regular
7 granting of permits for the use of state waters. As an essential
8 part of the state's environmental flows policy, all permit
9 conditions relating to freshwater inflows to affected bays and
10 estuaries and instream flow needs must be subject to temporary
11 suspension if necessary for water to be applied to essential
12 beneficial uses during emergencies. / 4/5

13 (d-1) The legislature finds that to provide certainty in
14 water management and development and to provide adequate protection
15 of the state's streams, rivers, and bays and estuaries, the state
16 must have a process with specific timelines for prompt action to
17 address environmental flow issues in the state's major basin and
18 bay systems, especially those systems in which unappropriated water
19 is still available.

20 (d-2) The legislature finds that:

21 (1) in those basins in which water is available for
22 appropriation, the commission should establish an environmental
23 set-aside below which water should not be available for
24 appropriation; and

25 (2) in those basins in which the unappropriated water
26 that will be set aside for instream flow and freshwater inflow
27 protection is not sufficient to fully satisfy the environmental

FA #2
① 1 flow standards established by the commission, a variety of ^{market} approaches, both public and private, for filling the gap must be
2 explored and pursued.

4 (d-3) The legislature finds that while the state has
5 pioneered tools to address freshwater inflow needs for bays and
6 estuaries, there are limitations to those tools in light of both
7 scientific and public policy evolution. To fully address bay and
8 estuary environmental flow issues, the foundation of work
9 accomplished by the state should be improved. While the state's
10 instream flow studies program appears to encompass a comprehensive
11 and scientific approach for establishing a process to assess
12 instream flow needs for rivers and streams across the state, more/ 5/16
13 extensive review and examination of the details of the program,
14 which may not be fully developed until the program is under way, are
15 needed to ensure an effective tool for evaluating riverine
16 environmental flow conditions.

17 (d-4) The legislature finds that the management of water to
18 meet instream flow and freshwater inflow needs should be evaluated
19 on a regular basis and adapted to reflect both improvements in
20 science related to environmental flows and future changes in
21 projected human needs for water. In addition, the development of
22 management strategies for addressing environmental flow needs
23 should be an ongoing, adaptive process that considers and addresses
24 local issues.

25 (d-5) The legislature finds that recommendations for state
26 action to protect instream flows and freshwater inflows should be
27 developed through a consensus-based, regional approach involving

1 balanced representation of stakeholders and that such a process
2 should be encouraged throughout the state.

3 (e) The fact that greater pressures and demands are being
4 placed on the water resources of the state makes it of paramount
5 importance to ensure [~~reexamine the process for ensuring~~] that
6 these important priorities are effectively addressed by detailing
7 how environmental flow standards are to be developed using the
8 environmental studies that have been and are to be performed by the
9 state and others and specifying in clear delegations of authority
10 how those environmental flow standards will be integrated into the
11 regional water planning and water permitting process [~~to the~~
12 ~~commission~~]. / 6/7

13 (f) The legislature recognizes that effective
14 implementation of the approach provided by this chapter for
15 protecting instream flows and freshwater inflows will require more
16 effective water rights administration and enforcement systems than
17 are currently available in most areas of the state.

18 SECTION 7. The heading to Section 11.0236, Water Code, is
19 amended to read as follows:

20 Sec. 11.0236. [~~STUDY COMMISSION ON WATER FOR~~] ENVIRONMENTAL
21 FLOWS COMMISSION.

22 SECTION 8. Section 11.0236, Water Code, is amended by
23 amending Subsections (a), (b), (c), (e) through (j), (n), and (o)
24 and adding Subsection (p) to read as follows:

25 (a) In recognition of the importance that the ecological
26 soundness of our riverine, bay, and estuary systems and riparian
27 lands has on the economy, health, and well-being of the state there

1 is created the [~~Study Commission on Water for~~] Environmental Flows
2 Commission.

3 (b) The flows [~~study~~] commission is composed of nine [~~15~~]
4 members as follows:

5 (1) three [~~two~~] members appointed by the governor;

6 (2) three [~~five~~] members of the senate appointed by
7 the lieutenant governor; and

8 (3) three [~~five~~] members of the house of
9 representatives appointed by the speaker of the house of
10 representatives[+]

11 [~~(4) the presiding officer of the commission or the~~
12 ~~presiding officer's designee,~~/

13 [~~(5) the chairman of the board or the chairman's~~
14 ~~designee, and~~

15 [~~(6) the presiding officer of the Parks and Wildlife~~
16 ~~Commission or the presiding officer's designee~~].

17 (c) Of the members appointed under Subsection (b)(1):

18 (1) one member must be a member of the commission;

19 (2) one member must be a member of the board; and

20 (3) one member must be a member of the Parks and
21 Wildlife Commission [~~(b)(2):~~

22 [~~(1) one member must represent a river authority or~~
23 ~~municipal water supply agency or authority,~~

24 [~~(2) one member must represent an entity that is~~
25 ~~distinguished by its efforts in resource protection, and~~

26 [~~(3) three members must be members of the senate~~].

27 (e) Each [~~appointed~~] member of the flows [~~study~~] commission

1 serves at the will of the person who appointed the member.

2 (f) The appointed senator with the most seniority and the
3 appointed house member with the most seniority serve together as
4 co-presiding officers of the flows [~~study~~] commission.

5 (g) A member of the flows [~~study~~] commission is not entitled
6 to receive compensation for service on the flows [~~study~~] commission
7 but is entitled to reimbursement of the travel expenses incurred by
8 the member while conducting the business of the flows [~~study~~]
9 commission, as provided by the General Appropriations Act.

10 (h) The flows [~~study~~] commission may accept gifts and grants
11 from any source to be used to carry out a function of the flows
12 [~~study~~] commission. / 8/9

13 (i) The commission shall provide staff support for the flows
14 [~~study~~] commission.

15 (j) The flows [~~study~~] commission shall conduct public
16 hearings and study public policy implications for balancing the
17 demands on the water resources of the state resulting from a growing
18 population with the requirements of the riverine, bay, and estuary
19 systems including granting permits for instream flows dedicated to
20 environmental needs or bay and estuary inflows, use of the Texas
21 Water Trust, and any other issues that the flows [~~study~~] commission
22 determines have importance and relevance to the protection of
23 environmental flows. In evaluating the options for providing
24 adequate environmental flows, the flows [~~study~~] commission shall
25 take notice of the strong public policy imperative that exists in
26 this state recognizing that environmental flows are important to
27 the biological health of our public and private lands, streams and

1 rivers [~~parks, game preserves~~], and bay and estuary systems and are
2 high priorities in the water management [~~permitting~~] process. The
3 flows [~~study~~] commission shall specifically address:

4 (1) ways that the ecological soundness of those
5 [these] systems will be ensured in the water rights administration
6 and enforcement and water allocation processes; and

7 (2) appropriate methods to encourage persons
8 voluntarily to convert reasonable amounts of existing water rights
9 to use for environmental flow protection temporarily or permanently
10 [process].

11 (n) The flows [~~study~~] commission may [~~shall~~] adopt rules,
12 procedures, and policies as needed to administer this section, to a/10
13 implement its responsibilities, and to exercise its authority under
14 Sections 11.02361 and 11.02362.

15 (o) Chapter 2110, Government Code, does not apply to the
16 size, composition, or duration of the flows commission.

17 (p) Not later than December 1, 2006, and every two years
18 thereafter, the flows commission shall issue and promptly deliver
19 to the governor, lieutenant governor, and speaker of the house of
20 representatives copies of a report summarizing:

21 (1) any hearings conducted by the flows commission;
22 (2) any studies conducted by the flows commission;
23 (3) any legislation proposed by the flows commission;
24 (4) progress made in implementing Sections 11.02361
25 and 11.02362; and

26 (5) any other findings and recommendations of the
27 flows commission [~~The study commission is abolished and this~~]

1 ~~section expires September 1, 2005]~~.

2 SECTION 9. Subchapter B, Chapter 11, Water Code, is amended
3 by adding Sections 11.02361 and 11.02362 to read as follows:

4 Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY
5 COMMITTEE. (a) The Texas Environmental Flows Science Advisory
6 Committee consists of at least five but not more than nine members
7 appointed by the flows commission.

8 (b) The flows commission shall appoint to the science
9 advisory committee persons who will provide an objective
10 perspective and diverse technical expertise, including expertise
11 in hydrology, hydraulics, water resources, aquatic and terrestrial
12 biology, geomorphology, geology, water quality, computer modeling,^{20/11}
13 and other technical areas pertinent to the evaluation of
14 environmental flows.

15 (c) Members of the science advisory committee serve
16 five-year terms expiring March 1. A vacancy on the science advisory
17 committee is filled by appointment by the co-presiding officers of
18 the flows commission for the unexpired term.

19 (d) Chapter 2110, Government Code, does not apply to the
20 size, composition, or duration of the science advisory committee.

21 (e) The science advisory committee shall:

22 (1) serve as an objective scientific body to advise
23 and make recommendations to the flows commission on issues relating
24 to the science of environmental flow protection; and

25 (2) develop recommendations to help provide overall
26 direction, coordination, and consistency relating to:

27 (A) environmental flow methodologies for bay and

1 estuary studies and instream flow studies;

2 (B) environmental flow programs at the
3 commission, the Parks and Wildlife Department, and the board; and

4 (C) the work of the basin and bay expert science
5 teams described in Section 11.02362.

6 (f) To assist the flows commission to assess the extent to
7 which the recommendations of the science advisory committee are
8 considered and implemented, the commission, the Parks and Wildlife
9 Department, and the board shall provide written reports to the
10 flows commission, at intervals determined by the flows commission,
11 that describe:

12 (1) the actions taken by each agency in response to ¹¹/₁₂
13 each recommendation; and

14 (2) for each recommendation not implemented, the
15 reason it was not implemented.

16 Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME
17 RECOMMENDATIONS. (a) For the purposes of this section, the flows
18 commission, not later than November 1, 2005, shall define the
19 geographical extent of each river basin and bay system in this state
20 for the sole purpose of developing environmental flow regime
21 recommendations under this section and adoption of environmental
22 flow standards under Section 11.1471.

23 (b) The flows commission shall give priority in descending
24 order to the following river basin and bay systems of the state for
25 the purpose of developing environmental flow regime
26 recommendations and adopting environmental flow standards:

27 (1) the river basin and bay system consisting of the

1 Trinity and San Jacinto Rivers and Galveston Bay and the river basin
2 and bay system consisting of the Sabine and Neches Rivers and Sabine
3 Lake Bay;

4 (2) the river basin and bay system consisting of the
5 Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the
6 river basin and bay system consisting of the Guadalupe, San
7 Antonio, and Aransas Rivers and Copano, Aransas, and San Antonio
8 Bays; and

9 (3) the river basin and bay system consisting of the
10 Nueces River and Corpus Christi and Baffin Bays, the river basin and
11 bay system consisting of the Rio Grande, the Rio Grande estuary, and
12 the Lower Laguna Madre, and the Brazos River and its associated bay^{12/13}
13 and estuary system.

14 (c) For the river basin and bay systems listed in Subsection
15 (b)(1):

16 (1) the flows commission shall appoint the basin and
17 bay area stakeholders committee not later than November 1, 2005;

18 (2) the basin and bay area stakeholders committee
19 shall establish a basin and bay expert science team not later than
20 March 1, 2006;

21 (3) the basin and bay expert science team shall
22 finalize environmental flow regime recommendations and submit them
23 to the basin and bay area stakeholders committee, the flows
24 commission, and the commission not later than March 1, 2007;

25 (4) the basin and bay area stakeholders committee
26 shall submit to the commission its comments on and recommendations
27 regarding the basin and bay expert science team's recommended

1 environmental flow regime not later than September 1, 2007; and

2 (5) the commission shall adopt the environmental flow
3 standards as provided by Section 11.1471 not later than September
4 1, 2008.

5 (d) The flows commission shall appoint the basin and bay
6 area stakeholders committees for the river basin and bay systems
7 listed in Subsection (b)(2) not later than September 1, 2006, and
8 shall appoint the basin and bay area stakeholders committees for
9 the river basin and bay systems listed in Subsection (b)(3) not
10 later than September 1, 2007. The flows commission shall establish
11 a schedule for the performance of the tasks listed in Subsections
12 (c)(2)-(5) with regard to the river basin and bay systems listed in^{3/14}
13 Subsections (b)(2) and (3) that will result in the adoption of
14 environmental flow standards for that river basin and bay system by
15 the commission as soon as is reasonably possible. Each basin and
16 bay area stakeholders committee and basin and bay expert science
17 team for a river basin and bay system listed in Subsection (b)(2) or
18 (3) shall make recommendations to the flows commission with regard
19 to the schedule applicable to that river basin and bay system. The
20 flows commission shall consider the recommendations of the basin
21 and bay area stakeholders committee and basin and bay expert
22 science team as well as coordinate with, and give appropriate
23 consideration to the recommendations of, the commission, the Parks
24 and Wildlife Department, and the board in establishing the
25 schedule.

26 (e) For a river basin and bay system or a river basin that
27 does not have an associated bay system in this state not listed in

1 Subsection (b), the flows commission shall establish a schedule for
2 the development of environmental flow regime recommendations and
3 the adoption of environmental flow standards. The flows commission
4 shall develop the schedule in consultation with the commission, the
5 Parks and Wildlife Department, the board, and the pertinent basin
6 and bay area stakeholders committee and basin and bay expert
7 science team. The flows commission may, on its own initiative or on
8 request, modify a schedule established under this subsection to be
9 more responsive to particular circumstances, local desires,
10 changing conditions, or time-sensitive conflicts. This subsection
11 does not prohibit, in a river basin and bay system for which the
12 flows commission has not yet established a schedule for the
13 development of environmental flow regime recommendations and the
14 adoption of environmental flow standards, an effort to develop
15 information on environmental flow needs and ways in which those
16 needs can be met by a voluntary consensus-building process.

17 (f) The flows commission shall appoint a basin and bay area
18 stakeholders committee for each river basin and bay system in this
19 state for which a schedule for the development of environmental
20 flow regime recommendations and the adoption of environmental flow
21 standards is specified by or established under Subsection (c), (d),
22 or (e). Chapter 2110, Government Code, does not apply to the size,
23 composition, or duration of a basin and bay area stakeholders
24 committee. Each committee must consist of at least 17 members. The
25 members must represent appropriate stakeholders, including
26 representatives of:

27 (1) agricultural water users;

- 1 (2) recreational water users, including coastal
2 recreational anglers and businesses supporting water recreation;
3 (3) municipalities;
4 (4) soil and water conservation districts;
5 (5) industrial water users; including representatives of both
6 (6) commercial fishermen; manufacturing and refining sectors
7 (7) public interest groups;
8 (8) regional water planning groups;
9 (9) groundwater conservation districts;
10 (10) river authorities and other conservation and
11 reclamation districts with jurisdiction over surface water; and
12 (11) environmental interests.

13 (g) Members of a basin and bay area stakeholders committee
14 serve five-year terms expiring March 1. If a vacancy occurs on a
15 committee, the remaining members of the committee by majority vote
16 shall appoint a member to serve the remainder of the unexpired term.

17 (h) Meetings of a basin and bay area stakeholders committee
18 must be open to the public.

19 (i) Each basin and bay area stakeholders committee shall
20 establish a basin and bay expert science team for the river basin
21 and bay system for which the committee is established. The basin
22 and bay expert science team must be established not later than six
23 months after the date the basin and bay area stakeholders committee
24 is established. Chapter 2110, Government Code, does not apply to
25 the size, composition, or duration of a basin and bay expert science
26 team. Each basin and bay expert science team must be composed of
27 technical experts with special expertise regarding the river basin

1 and bay system or regarding the development of environmental flow
2 regimes. A person may serve as a member of more than one basin and
3 bay expert science team at the same time.

4 (j) The members of a basin and bay expert science team serve
5 five-year terms expiring April 1. A vacancy on a basin and bay
6 expert science team is filled by appointment by the pertinent basin
7 and bay area stakeholders committee to serve the remainder of the
8 unexpired term.

9 (k) The science advisory committee shall appoint one of its
10 members to serve as a liaison to each basin and bay expert science
11 team to facilitate coordination and consistency in environmental
12 flow activities throughout the state. The commission, the Parks
13 and Wildlife Department, and the board shall provide technical
14 assistance to each basin and bay expert science team, including
15 information about the studies conducted under Sections 16.058 and
16 16.059, and may serve as nonvoting members of the basin and bay
17 expert science team to facilitate the development of environmental
18 flow regime recommendations.

19 (l) Where reasonably practicable, meetings of a basin and
20 bay expert science team must be open to the public.

21 (m) Each basin and bay expert science team shall develop
22 environmental flow analyses and a recommended environmental flow
23 regime for the river basin and bay system for which the team is
24 established through a collaborative process designed to achieve a
25 consensus. In developing the analyses and recommendations, the
26 science team must consider all reasonably available science,
27 without regard to the need for the water for other uses, and the

1 science team's recommendations must be based solely on the best
2 science available.

3 (n) Each basin and bay expert science team shall submit its
4 environmental flow analyses and environmental flow regime
5 recommendations to the pertinent basin and bay area stakeholders
6 committee, the flows commission, and the commission in accordance
7 with the applicable schedule specified by or established under
8 Subsection (c), (d), or (e). The basin and bay area stakeholders
9 committee and the flows commission may not change the environmental
10 flow analyses or environmental flow regime recommendations of the
11 basin and bay expert science team.

12 (o) Each basin and bay area stakeholders committee shall
13 review the environmental flow analyses and environmental flow
14 regime recommendations submitted by the committee's basin and bay
15 expert science team and shall consider them in conjunction with
16 other factors, including the present and future needs for water for
17 other uses related to water supply planning in the pertinent river
18 basin and bay system. The basin and bay area stakeholders committee
19 shall develop recommendations regarding environmental flow
20 standards and strategies to meet the environmental flow standards
21 and submit those recommendations to the commission and to the flows
22 commission in accordance with the applicable schedule specified by
23 or established under Subsection (c), (d), or (e). In developing its
24 recommendations, the basin and bay area stakeholders committee
25 shall operate on a consensus basis to the maximum extent possible.

26 (p) In recognition of the importance of adaptive
27 management, after submitting its recommendations regarding

1 environmental flow standards and strategies to meet the^{18/}
2 environmental flow standards to the commission, each basin and bay
3 area stakeholders committee, with the assistance of the pertinent
4 basin and bay expert science team, shall prepare and submit for
5 approval by the flows commission a work plan. The work plan must:

6 (1) establish a periodic review of the basin and bay
7 environmental flow analyses and environmental flow regime
8 recommendations, environmental flow standards, and strategies, to
9 occur at least once every 10 years;

10 (2) prescribe specific monitoring, studies, and
11 activities; and

12 (3) establish a schedule for continuing the validation
13 or refinement of the basin and bay environmental flow analyses and
14 environmental flow regime recommendations, the environmental flow
15 standards adopted by the commission, and the strategies to achieve
16 those standards.

17 (q) In accordance with the applicable schedule specified by
18 or established under Subsection (c), (d), or (e), the flows
19 commission, with input from the science advisory committee, shall
20 review the environmental flow analyses and environmental flow
21 regime recommendations submitted by each basin and bay expert
22 science team. If appropriate, the flows commission shall submit
23 comments on the analyses and recommendations to the commission for
24 use by the commission in adopting rules under Section 11.1471.
25 Comments must be submitted not later than six months after the date
26 of receipt of the analyses and recommendations.

27 (r) In the event the commission, by permit or order, has

1 established an estuary advisory council, that council may continue
2 in full force and effect.

3 SECTION 10. Subsections (a) and (b), Section 11.0237, Water
4 Code, are amended to read as follows:

5 (a) The commission may not issue a new permit for instream
6 flows dedicated to environmental needs or bay and estuary inflows.
7 The ~~[This section does not prohibit the]~~ commission may approve
8 ~~[from issuing]~~ an application to amend ~~[amendment to]~~ an existing
9 permit or certificate of adjudication to change the use to or add a
10 use for instream flows dedicated to environmental needs or bay and
11 estuary inflows.

12 (b) This section does not alter the commission's
13 obligations under Section 11.042(b), 11.042(c), 11.046(b),
14 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491,
15 11.150, 11.152, 16.058, or 16.059.

F.A.H.
(3)
16 SECTION 11. Subsection (b), Section 11.042, Water Code, is
17 amended to read as follows:

18 (b) A person who wishes to discharge and then subsequently
19 divert and reuse the person's existing return flows derived from
20 developed water ~~[privately owned groundwater]~~ must obtain prior
21 authorization from the commission for the diversion and the reuse
22 of these return flows. The authorization may allow for the
23 diversion and reuse by the discharger of existing return flows,
24 less carriage losses, and shall be subject to special conditions if
25 necessary to protect an existing water right that was granted based
26 on the use or availability of these return flows. Special
27 conditions may also be provided to help maintain instream uses and

1 freshwater inflows to bays and estuaries. A person wishing to
2 divert and reuse future increases of return flows derived from
3 developed water [~~privately owned groundwater~~] must obtain
4 authorization to reuse increases in return flows before the
5 increase.

6 SECTION ¹¹~~12~~. Subsection (b), Section 11.082, Water Code, is
7 amended to read as follows:

8 (b) The state may recover the penalties prescribed in
9 Subsection (a) [~~of this section~~] by suit brought for that purpose in
10 a court of competent jurisdiction. The state may seek those
11 penalties regardless of whether a watermaster has been appointed
12 for the water division, river basin, or segment of a river basin
13 where the unlawful use is alleged to have occurred.

14 SECTION ¹²~~13~~. Section 11.0841, Water Code, is amended by
15 adding Subsection (c) to read as follows:

16 (c) For purposes of this section, the Parks and Wildlife
17 Department has:

18 (1) the rights of a holder of a water right that is
19 held in the Texas Water Trust, including the right to file suit in a
20 civil court to prevent the unlawful use of such a right;

21 (2) the right to act in the same manner that a holder
22 of a water right may act to protect the holder's rights in seeking
23 to prevent any person from appropriating water in violation of a
24 set-aside established by the commission under Section 11.1471 to
25 meet instream flow needs or freshwater inflow needs; and

26 (3) the right to file suit in a civil court to prevent
27 the unlawful use of a set-aside established under Section 11.1471.

13
1 SECTION M. Subsection (a), Section 11.0842, Water Code, is
2 amended to read as follows:

3 (a) If a person violates this chapter, a rule or order
4 adopted under this chapter or Section 16.236 ~~[of this code]~~, or a
5 permit, certified filing, or certificate of adjudication issued
6 under this chapter, the commission may assess an administrative
7 penalty against that person as provided by this section. The
8 commission may assess an administrative penalty for a violation
9 relating to a water division or a river basin or segment of a river
10 basin regardless of whether a watermaster has been appointed for
11 the water division or river basin or segment of the river basin.

14
12 SECTION N. Subsection (a), Section 11.0843, Water Code, is
13 amended to read as follows:

14 (a) Upon witnessing a violation of this chapter or a rule or
15 order or a water right issued under this chapter, the executive
16 director or a person designated by the executive director,
17 including a watermaster or the watermaster's deputy, [as defined by
18 commission rule, may issue the alleged violator a field citation ²¹/₂₂
19 alleging that a violation has occurred and providing the alleged
20 violator the option of either:

21 (1) without admitting to or denying the alleged
22 violation, paying an administrative penalty in accordance with the
23 predetermined penalty amount established under Subsection (b) ~~[of~~
24 ~~this section]~~ and taking remedial action as provided in the
25 citation; or

26 (2) requesting a hearing on the alleged violation in
27 accordance with Section 11.0842 ~~[of this code]~~.

1 SECTION ¹⁵~~16~~. Subsection (c), Section 11.126, Water Code, is
2 amended to read as follows:

3 (c) If the application proposes construction of a dam
4 greater than six feet in height, measured from the channel invert
5 elevation to the top of the dam, either for diversion or storage,
6 the executive director may also require filing a copy of all plans
7 and specifications and a copy of the engineer's field notes of any
8 survey of the lake or reservoir. No work on the project shall
9 proceed until approval of the plans is obtained from the executive
10 director.

11 SECTION ¹⁶~~17~~. Subsection (b), Section 11.134, Water Code, is
12 amended to read as follows:

13 (b) The commission shall grant the application only if:

14 (1) the application conforms to the requirements
15 prescribed by this chapter and is accompanied by the prescribed
16 fee;

17 (2) unappropriated water is available in the source of
18 supply;

19 (3) the proposed appropriation:

20 (A) is intended for a beneficial use;

21 (B) does not impair existing water rights or
22 vested riparian rights;

23 (C) is not detrimental to the public welfare;

24 (D) considers any applicable environmental flow
25 standards established under Section 11.1471 and, if applicable, the
26 assessments performed under Sections 11.147(d) and (e) and Sections
27 11.150, 11.151, and 11.152; and

1 (E) addresses a water supply need in a manner
2 that is consistent with the state water plan and the relevant
3 approved regional water plan for any area in which the proposed
4 appropriation is located, unless the commission determines that
5 conditions warrant waiver of this requirement; and

6 (4) the applicant has provided evidence that
7 reasonable diligence will be used to avoid waste and achieve water
8 conservation as defined by [~~Subdivision (8)(B),~~] Section
9 11.002(8)(B) [~~11.002~~].

10 SECTION ¹⁷~~18~~. Section 11.147, Water Code, is amended by
11 amending Subsections (b), (d), and (e) and adding Subsections (e-1),
12 ^{and (e-3)}~~and (e-2)~~ to read as follows:

13 (b) In its consideration of an application for a permit to
14 store, take, or divert water, the commission shall assess the
15 effects, if any, of the issuance of the permit on the bays and
16 estuaries of Texas. For permits issued within an area that is 200
17 river miles of the coast, to commence from the mouth of the river
18 thence inland, the commission shall include in the permit any
19 conditions considered necessary to maintain freshwater inflows to
20 any affected bay and estuary system, to the extent practicable when
21 considering all public interests and the studies mandated by
22 Section 16.058 as evaluated under Section 11.1491[, ~~those~~
23 ~~conditions considered necessary to maintain beneficial inflows to~~
24 ~~any affected bay and estuary system~~].

25 (d) In its consideration of an application to store, take,
26 or divert water, the commission shall include in the permit, to the
27 extent practicable when considering all public interests, those

1 conditions considered by the commission necessary to maintain
2 existing instream uses and water quality of the stream or river to
3 which the application applies. In determining what conditions to
4 include in the permit under this subsection, the commission shall
5 consider among other factors:

6 (1) the studies mandated by Section 16.059; and

7 (2) any water quality assessment performed under
8 Section 11.150.

9 (e) The commission shall include in the permit, to the
10 extent practicable when considering all public interests, those
11 conditions considered by the commission necessary to maintain fish
12 and wildlife habitats. In determining what conditions to include
13 in the permit under this subsection, the commission shall consider
14 any assessment performed under Section 11.152.

15 (e-1) Any permit for a new appropriation of water or an
16 amendment to an existing water right that increases the amount of
17 water authorized to be stored, taken, or diverted must include a
18 provision allowing the commission to adjust the conditions included
19 in the permit or amended water right to provide for protection of
20 instream flows or freshwater inflows. With respect to an amended
21 water right, the provision may not allow the commission to adjust a
22 condition of the amendment other than a condition that applies only
23 to the increase in the amount of water to be stored, taken, or
24 diverted authorized by the amendment. This subsection does not
25 affect an appropriation of or an authorization to store, take, or
26 divert water under a permit or amendment to a water right issued
27 before September 1, 2005. The commission shall adjust the

1 conditions if the commission determines, through an expedited
2 public comment process, that such an adjustment is appropriate to
3 achieve compliance with applicable environmental flow standards
4 adopted under Section 11.1471. The adjustment:

5 (1) in combination with any previous adjustments made
6 under this subsection may not increase the amount of the
7 pass-through or release requirement for the protection of instream
8 flows or freshwater inflows by more than 12.5 percent of the
9 annualized total of that requirement contained in the permit as
10 issued or of that requirement contained in the amended water right
11 and applicable only to the increase in the amount of water
12 authorized to be stored, taken, or diverted under the amended water
13 right;

14 (2) must be based on appropriate consideration of the
15 priority dates and diversion locations of any other water rights
16 granted in the same river basin that are subject to adjustment under
17 this subsection; and

18 (3) must be based on appropriate consideration of any
19 voluntary contributions to the Texas Water Trust that contribute
20 toward meeting the environmental flow standards. ²⁵
21 holder making such donation shall be entitled to appropriate credit
22 of such benefits against adjustments of his water right pursuant to
23 Subdivision (1). ²⁶
24 ^{F.A.#2} ⁽⁶⁾ ¹² ^{(e-1)(1)} ^{F.A.#2} ⁽⁷⁾ ³ ^(e-2) ^{section (e-1)} ^{Subdivision (1)}

25 (e-3) Notwithstanding Subsections (b)-(e), for the purpose
26 of determining the environmental flow conditions necessary to
27 maintain freshwater inflows to an affected bay and estuary system,
existing instream uses and water quality of a stream or river, or

1 fish and aquatic wildlife habitats, the commission shall apply any
2 applicable environmental flow standard, including any
3 environmental flow set-aside, adopted under Section 11.1471
4 instead of considering the factors specified by those subsections.

5 SECTION ¹⁸~~19~~. Subchapter D, Chapter 11, Water Code, is
6 amended by adding Section 11.1471 to read as follows:

7 Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

8 (a) The commission by rule shall:

9 (1) adopt appropriate environmental flow standards
10 for each river basin and bay system in this state that are adequate
11 to support a sound ecological environment, to the maximum extent
12 reasonable considering other public interests and other relevant
13 factors;

14 (2) establish an amount of unappropriated water, if
15 available, to be set aside to satisfy the environmental flow
16 standards to the maximum extent reasonable when considering human
17 water needs; and

18 (3) establish procedures for implementing an
19 adjustment of the conditions included in a permit or an amended
20 water right as provided by Section ²⁶~~11.147(e-1)~~ and (e-2).
F.A.# 2

21 (b) In adopting environmental flow standards for a river
22 basin and bay system under Subsection (a)(1), the commission shall
23 consider:

24 (1) the definition of the geographical extent of the
25 river basin and bay system adopted by the flows commission under
26 Section 11.02362(a);

27 (2) the schedule for the adoption of environmental

1 flow standards for the river basin and bay system established by the
2 flows commission under Section 11.02362(d) or (e), if applicable;

3 (3) the environmental flow analyses and the
4 recommended environmental flow regime developed by the applicable
5 basin and bay expert science team under Section 11.02362(m);

6 (4) the recommendations regarding environmental flow
7 standards and strategies to meet the flow standards developed by
8 the applicable basin and bay area stakeholders committee under
9 Section 11.02362(o);

10 (5) the specific characteristics of the river basin
11 and bay system;

12 (6) economic factors;

13 (7) the human and other competing water needs in the
14 river basin and bay system;

15 (8) all reasonably available scientific information,
16 including any scientific information provided by the science
17 advisory committee; and

18 (9) any other appropriate information.

19 (c) Environmental flow standards adopted under Subsection
20 (a)(1) must consist of a schedule of flow quantities, reflecting
21 seasonal and yearly fluctuations that may vary geographically by
22 specific location in a river basin and bay system.

23 (d) As provided by Section 11.023, the commission may not
24 issue a permit for a new appropriation or an amendment to an
25 existing water right that increases the amount of water authorized
26 to be stored, taken, or diverted if the issuance of the permit or
27 amendment would impair an environmental flow set-aside established

27
28

1 under Subsection (a)(2). A permit for a new appropriation or an
2 amendment to an existing water right that increases the amount of
3 water authorized to be stored, taken, or diverted that is issued
4 after the adoption of an applicable environmental flow set-aside
5 must contain appropriate conditions to ensure protection of the
6 environmental flow set-aside.

7 (e) An environmental flow set-aside established under
8 Subsection (a)(2) ^{for a river basin and bay system other than the middle and lower Rio Grande} must be assigned a priority date corresponding to
9 the date the commission receives environmental flow regime
10 recommendations from the applicable basin and bay expert science
11 team and be included in the appropriate water availability models
12 in connection with an application for a permit for a new
13 appropriation or for an amendment to an existing water right that
14 increases the amount of water authorized to be stored, taken, or
15 diverted.

16 (f) An environmental flow standard or environmental flow
17 set-aside adopted under Subsection (a) may be altered by the
18 commission in a rulemaking process undertaken in accordance with a
19 schedule established by the commission. The commission's schedule
20 may not provide for the rulemaking process to occur more frequently
21 than once every 10 years unless the applicable work plan approved by
22 the flows commission under Section 11.02362(p) provides for a
23 periodic review under that section to occur more frequently than
24 once every 10 years. In that event, the commission may provide for
25 the rulemaking process to be undertaken in conjunction with the
26 periodic review if the commission determines that schedule to be
27 appropriate.

1 SECTION ¹⁹~~20~~. The heading to Section 11.148, Water Code, is
2 amended to read as follows:

3 Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND
4 EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR
5 ENVIRONMENTAL FLOWS.

6 SECTION ²⁰~~21~~. Section 11.148, Water Code, is amended by
7 adding Subsection (a-1) and amending Subsections (b) and (c) to
8 read as follows:

9 (a-1) State water that is set aside by the commission to
10 meet the needs for freshwater inflows to affected bays and
11 estuaries and instream uses under Section 11.1471(a)(2) may be made
12 available temporarily for other essential beneficial uses if the
13 commission finds that an emergency exists that cannot practically
14 be resolved in another way.

15 (b) Before the commission suspends a permit condition under
16 Subsection (a) or makes water available temporarily under
17 Subsection (a-1) [of this section], it must give written notice to ²⁹
18 the Parks and Wildlife Department of the proposed action ₃₀
19 [suspension]. The commission shall give the Parks and Wildlife
20 Department an opportunity to submit comments on the proposed action
21 [suspension] within 72 hours from such time and the commission
22 shall consider those comments before issuing its order implementing
23 the proposed action [imposing the suspension].

24 (c) The commission may suspend the permit condition under
25 Subsection (a) or make water available temporarily under Subsection
26 (a-1) without notice to any other interested party other than the
27 Parks and Wildlife Department as provided by Subsection (b) [~~of~~

1 ~~this section~~]. However, all affected persons shall be notified
2 immediately by publication, and a hearing to determine whether the
3 suspension should be continued shall be held within 15 days of the
4 date on which the order to suspend is issued.

5 SECTION ²¹22. Subsection (a), Section 11.1491, Water Code, is
6 amended to read as follows:

7 (a) The Parks and Wildlife Department and the commission
8 shall have joint responsibility to review the studies prepared
9 under Section 16.058 [~~of this code~~], to determine inflow conditions
10 necessary for the bays and estuaries, and to provide information
11 necessary for water resources management. Each agency shall
12 designate an employee to share equally in the oversight of the
13 program. Other responsibilities shall be divided between the Parks
14 and Wildlife Department and the commission to maximize present
15 in-house capabilities of personnel and to minimize costs to the
16 state. Each agency shall have reasonable access to all information
17 produced by the other agency. Publication of reports completed ^{30/}31
18 under this section shall be submitted for comment to [~~both~~] the
19 commission, [~~and~~] the Parks and Wildlife Department, the flows
20 commission, the science advisory committee, and any applicable
21 basin and bay area stakeholders committee and basin and bay expert
22 science team.

23 SECTION ²²23. Subsection (g), Section 11.329, Water Code, is
24 amended to read as follows:

25 (g) The commission may not assess costs under this section
26 against a holder of a non-priority hydroelectric right that owns or
27 operates privately owned facilities that collectively have a

1 capacity of less than two megawatts or against a holder of a water
2 right placed in the Texas Water Trust for a term of at least 20
3 years. [~~This subsection is not intended to affect in any way the~~
4 ~~fees assessed on a water right holder by the commission under~~
5 ~~Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular~~
6 ~~Session, 1993. For purposes of Section 1.29(d), Chapter 626, Acts~~
7 ~~of the 73rd Legislature, Regular Session, 1993, a holder of a~~
8 ~~non-priority hydroelectric right that owns or operates privately~~
9 ~~owned facilities that collectively have a capacity of less than two~~
10 ~~megawatts shall be assessed fees at the same rate per acre-foot~~
11 ~~charged to a holder of a non-priority hydroelectric right that owns~~
12 ~~or operates privately owned facilities that collectively have a~~
13 ~~capacity of more than two megawatts.~~]

14 SECTION ²³~~24~~. Subsection (e), Section 11.404, Water Code, is
15 amended to read as follows:

16 (e) The court may not assess costs and expenses under this
17 section against: 34
32

18 (1) a holder of a non-priority hydroelectric right
19 that owns or operates privately owned facilities that collectively
20 have a capacity of less than two megawatts; or

21 (2) a holder of a water right placed in the Texas Water
22 Trust for a term of at least 20 years.

23 SECTION ²⁴~~25~~. Subchapter I, Chapter 11, Water Code, is
24 amended by adding Section 11.4531 to read as follows:

25 Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For
26 each river basin or segment of a river basin for which the executive
27 director appoints a watermaster under this subchapter, the

1 executive director shall appoint a watermaster advisory committee
2 consisting of at least nine but not more than 15 members. A member
3 of the advisory committee must be a holder of a water right or a
4 representative of a holder of a water right in the river basin or
5 segment of the river basin for which the watermaster is appointed.
6 In appointing members to the advisory committee, the executive
7 director shall consider:

8 (1) geographic representation;
9 (2) amount of water rights held;
10 (3) different types of holders of water rights and
11 users, including water districts, municipal suppliers, irrigators,
12 and industrial users; and
13 (4) experience and knowledge of water management
14 practices.

15 (b) An advisory committee member is not entitled to
16 reimbursement of expenses or to compensation.

17 (c) An advisory committee member serves a two-year term
18 expiring August 31 of each odd-numbered year and holds office until
19 a successor is appointed.

20 (d) The advisory committee shall meet within 30 days after
21 the date the initial appointments have been made and shall select a
22 presiding officer to serve a one-year term. The committee shall
23 meet regularly as necessary.

24 (e) The advisory committee shall:

25 (1) make recommendations to the executive director
26 regarding activities of benefit to the holders of water rights in
27 the administration and distribution of water to holders of water

1 rights in the river basin or segment of the river basin for which
2 the watermaster is appointed;

3 (2) review and comment to the executive director on
4 the annual budget of the watermaster operation; and

5 (3) perform other advisory duties as requested by the
6 executive director regarding the watermaster operation or as
7 requested by holders of water rights and considered by the
8 committee to benefit the administration of water rights in the
9 river basin or segment of the river basin for which the watermaster
10 is appointed.

11 SECTION ²⁵26. Section 11.454, Water Code, is amended to read
12 as follows:

13 Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER.
14 Section 11.327 applies to the duties and authority of a watermaster
15 appointed for a river basin or segment of a river basin under this
16 subchapter in the same manner as that section applies to the duties
17 and authority of a watermaster appointed for a water division under
18 Subchapter G [A watermaster as the agent of the commission and under
19 the executive director's supervision shall:

20 ~~[(1) divide the water of the streams or other sources~~
21 ~~of supply of his segment or basin in accordance with the authorized~~
22 ~~water rights;~~

23 ~~[(2) regulate or cause to be regulated the controlling~~
24 ~~works of reservoirs and diversion works in time of water shortage,~~
25 ~~as is necessary because of the rights existing in the streams of his~~
26 ~~segment or basin, or as is necessary to prevent the waste of water~~
27 ~~or its diversion, taking, storage, or use in excess of the~~

1 ~~quantities to which the holders of water rights are lawfully~~
2 ~~entitled; and~~

3 ~~[(3) perform any other duties and exercise any~~
4 ~~authority directed by the commission].~~

5 SECTION ²⁶27. Section 11.455, Water Code, is amended to read
6 as follows:

7 Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER
8 [ASSESSMENTS]. (a) Section 11.329 applies to the payment of the
9 compensation and expenses of a watermaster appointed for a river
10 basin or segment of a river basin under this subchapter in the same
11 manner as that section applies to the payment of the compensation
12 and expenses of a watermaster appointed for a water division under
13 Subchapter G.

14 (b) The executive director shall deposit the assessments
15 collected under this section to the credit of the watermaster fund.

16 (c) Money deposited under this section to the credit of the
17 watermaster fund may be used only for the purposes specified by
18 Section 11.3291 with regard to the watermaster operation under this
19 subchapter with regard to which the assessments were collected [The
20 ~~commission may assess the costs of the watermaster against all~~
21 ~~persons who hold water rights in the river basin or segment of the~~
22 ~~river basin under the watermaster's jurisdiction in accordance with~~
23 ~~Section 11.329 of this code].~~

24 SECTION ²⁷28. Subchapter F, Chapter 15, Water Code, is
25 amended by adding Section 15.4063 to read as follows:

26 Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may
27 authorize the use of money in the research and planning fund:

1 (1) to compensate the members of the Texas
2 Environmental Flows Science Advisory Committee established under
3 Section 11.02361 for attendance and participation at meetings of
4 the committee and for transportation, meals, lodging, or other
5 travel expenses associated with attendance at those meetings as
6 provided by the General Appropriations Act;

7 (2) for contracts with cooperating state and federal
8 agencies and universities and with private entities as necessary to
9 provide technical assistance to enable the Texas Environmental
10 Flows Science Advisory Committee and the basin and bay expert
11 science teams established under Section 11.02362 to perform their
12 statutory duties;

13 (3) to compensate the members of the expert science
14 teams created pursuant to Section 11.02362(i) for attendance and
15 participation at meetings of the teams and for transportation,
16 meals, lodging, or other travel expenses associated with attendance
17 at those meetings as provided by the General Appropriations Act;
18 and

19 (4) for contracts with political subdivisions
20 designated as representatives of stakeholder committees
21 established pursuant to Section 11.02362 to fund all or part of the
22 administrative expenses for conducting meetings of the stakeholder
23 committee or the associated expert science team.

24 ²⁸
SECTION 29. Section 15.7031, Water Code, is amended by
25 amending Subsection (c) and adding Subsection (e) to read as
26 follows:

27 (c) The dedication of any water rights placed in trust must

1 be reviewed and approved by the commission, in consultation with
2 the board, ~~[and]~~ the Parks and Wildlife Department, and the
3 Environmental Flows Commission. In addition, the Department of
4 Agriculture and the basin and bay area stakeholders committee and
5 basin and bay expert science team established under Section
6 11.02362 for the river basin and bay system to which the water right
7 pertains may provide input to the commission, as appropriate,
8 during the review and approval process for dedication of water
9 rights.

10 (e) While a water right is held in the trust, the water
11 authorized for beneficial use under the terms of the water right is
12 considered to be held for instream flows, water quality, fish and
13 wildlife habitat, bay and estuary inflows, or other environmental
14 uses without the need for a permit amendment. After the water right
15 is withdrawn in whole or in part from the trust, the use of the water
16 right or portion of the water right withdrawn must be in accordance
17 with the terms of the water right. /

18 INSA → SECTION ~~30~~. Subsection (d), Section 16.059, Water Code, is
19 amended to read as follows:

20 (d) The priority studies shall be completed not later than
21 December 31, 2014 ~~[2010]~~. The Parks and Wildlife Department, the
22 commission, and the board shall establish a work plan that
23 prioritizes the studies and that sets interim deadlines providing
24 for publication of flow determinations for individual rivers and
25 streams on a reasonably consistent basis throughout the prescribed
26 study period. Before publication, completed studies shall be
27 submitted for comment to the commission, the board, and the Parks

1 and Wildlife Department.

2 SECTION 31. Subsection (h), Section 26.0135, Water Code, as
3 amended by Chapters 234 and 965, Acts of the 77th Legislature,
4 Regular Session, 2001, is reenacted and amended to read as follows:

5 (h) The commission shall apportion, assess, and recover the
6 reasonable costs of administering the water quality management
7 programs under this section from users of water and wastewater
8 permit holders in the watershed according to the records of the
9 commission generally in proportion to their right, through permit
10 or contract, to use water from and discharge wastewater in the
11 watershed. Irrigation water rights, ~~and~~ non-priority
12 hydroelectric rights of a water right holder that owns or operates
13 privately owned facilities that collectively have a capacity of
14 less than two megawatts, and water rights held in the Texas Water
15 Trust for terms of at least 20 years will not be subject to this
16 assessment. The cost to river authorities and others to conduct
17 water quality monitoring and assessment shall be subject to prior
18 review and approval by the commission as to methods of allocation
19 and total amount to be recovered. The commission shall adopt rules
20 to supervise and implement the water quality monitoring,
21 assessment, and associated costs. The rules shall ensure that
22 water users and wastewater dischargers do not pay excessive
23 amounts, that program funds are equitably apportioned among basins,
24 that a river authority may recover no more than the actual costs of
25 administering the water quality management programs called for in
26 this section, and that no municipality shall be assessed cost for
27 any efforts that duplicate water quality management activities

1 described in Section 26.177 [~~of this chapter~~]. The rules
2 concerning the apportionment and assessment of reasonable costs
3 shall provide for a recovery of not more than \$5,000,000 annually.
4 Costs recovered by the commission are to be deposited to the credit
5 of the water resource management account and may be used only to
6 accomplish the purposes of this section. The commission may apply
7 not more than 10 percent of the costs recovered annually toward the
8 commission's overhead costs for the administration of this section
9 and the implementation of regional water quality assessments. The
10 commission, with the assistance and input of each river authority,
11 shall file a written report accounting for the costs recovered
12 under this section with the governor, the lieutenant governor, and
13 the speaker of the house of representatives on or before December 1
14 of each even-numbered year.

15 SECTION 32. Subsections (d), (k), (l), and (m), Section
16 11.0236, Subsection (c), Section 11.0237, and Subsection (b),
17 Section 11.1491, Water Code, are repealed.

18 SECTION 33. The Study Commission on Water for Environmental
19 Flows is abolished on the effective date of this Act.

20 SECTION 34. (a) The governor, lieutenant governor, and
21 speaker of the house of representatives shall appoint the initial
22 members of the Environmental Flows Commission as provided by
23 Section 11.0236, Water Code, as amended by this Act, as soon as
24 practicable on or after the effective date of this Act.

25 (b) As soon as practicable after taking office, the initial
26 members of the Environmental Flows Commission shall appoint the
27 initial members of the Texas Environmental Flows Science Advisory

1 Committee as provided by Section 11.02361, Water Code, as added by
2 this Act. The terms of the initial members of the committee expire ^{4/10}~~3/1~~
3 March 1, 2010.

4 (c) The Environmental Flows Commission shall appoint the
5 members of each basin and bay area stakeholders committee as
6 provided by Section 11.02362, Water Code, as added by this Act. The
7 terms of the initial members of each committee expire March 1 of the
8 fifth year that begins after the year in which the initial
9 appointments are made.

10 (d) Each basin and bay area stakeholders committee shall
11 appoint the members of the basin and bay expert science team for the
12 river basin and bay system for which the committee is established as
13 provided by Section 11.02362, Water Code, as added by this Act. The
14 terms of the initial members of each team expire April 1 of the
15 fifth year that begins after the year in which the initial
16 appointments are made.

17 (e) The executive director of the Texas Commission on
18 Environmental Quality shall appoint the members of the watermaster
19 advisory committee under Section 11.4531, Water Code, as added by
20 this Act, for each river basin or segment of a river basin for which
21 the executive director appoints a watermaster under Subchapter I,
22 Chapter 11, Water Code. The terms of the initial members of each
23 committee expire August 31 of the first odd-numbered year that
24 begins after the year in which the initial appointments are made.

25 SECTION 35. The changes in law made by this Act relating to
26 a permit for a new appropriation of water or to an amendment to an
27 existing water right that increases the amount of water authorized

1 to be stored, taken, or diverted apply only to:

2 (1) water appropriated under a permit for a new ¹¹/₁₂
3 appropriation of water the application for which is pending with
4 the Texas Commission on Environmental Quality on the effective date
5 of this Act or is filed with the commission on or after that date; or

6 (2) the increase in the amount of water authorized to
7 be stored, taken, or diverted under an amendment to an existing
8 water right that increases the amount of water authorized to be
9 stored, taken, or diverted and the application for which is pending
10 with the Texas Commission on Environmental Quality on the effective
11 date of this Act or is filed with the commission on or after that
12 date.

13 SECTION 36. This Act takes effect September 1, 2005.

ADOPTED

MAY 20 2005

Atty Gen
Secretary of the Senate

A. New

FLOOR AMENDMENT NO. 1

BY: _____

- 1 Amend S.B. No. 1512 (senate committee printing) as follows:
- 2 ✓ (1) In the recital to SECTION 4 of the bill (page 1, line ²
- 3 ¹⁸ 50), strike "(7),".
- 4 ✓ (2) In SECTION 4 of the bill, amended Section 11.002, Water ^{2,22 - p. 3, l. 7}
- 5 Code (page 1, line 54, through page 2, line 3), strike proposed
- 6 Subdivision (7). 20, l. 16 - p. 21 l. 5
- 7 ✓ (3) Strike SECTION 11 of the bill (page 8, line 57, through
- 8 page 9, line 4) and renumber the subsequent sections of the bill
- 9 accordingly.

ADOPTED

MAY 20 2005

Latoy Law
Secretary of the Senate

1 Amend CSSB 1512 as follows:

2

3 On page 3, line 9, after "variety of" insert "market";

4

5 On page 7, line 7, between "users" and ";" insert ", including representatives of both
6 manufacturing and refining sectors";Insert 7
F.A.#2
(2)at
p. 18, l. 28 On page 7, line 58, after "science available." insert "For the Rio Grande below Fort Quitman, any
9 uses attributable to Mexican water flows must be ~~excluded~~ ^{excluded} from environmental flow regime
10 recommendations."Insert 11
F.A.#2
(4)at
p. 18, l. 1312 On page 8, on line 5, between "bay system." and "The basin", insert "For the Rio Grande, the
13 basin and bay area stakeholders committee shall also consider the water accounting requirements
14 for any international water sharing treaty, minutes, and agreements applicable to the Rio Grande
15 and the effects on allocation of water by the Rio Grande watermaster in the middle and lower Rio
16 Grande. The Rio Grande basin and bay expert science team may not recommend any
17 environmental flow regime that would result in a violation of a treaty or court decision."

18

19 On page 10, line 23, replace "(1), and (e-2)" with "(1), (e-2) and (e-3)";

20

21 On page 11, line 16, between "standards." and "Any", insert "(e-2)";

compare X-ref
p. 26, l. 23

22

23 On page 11, line 20, strike "(e-2)" and insert "(e-3)";

24

25 On page 11, line 43, between "(e-1)" and ".", insert "and (e-2)";

26

27 On page 12, line 16, between "(a) (2)" and "must", insert "for a river basin and bay system other
28 than the middle and lower Rio Grande";

1 FLOOR AMENDMENT NO. 3

BY *[Signature]*

ADOPTED

2
3
4 Amend Senate Committee Printing for SB 1512 as follows:

MAY 20 2005

5
6 On page 15, after line 34 insert the following new Section 30 and renumber the
7 subsequent Sections accordingly:

Insert
F.A.# 3 at p. 37, l. 10
8
9 ²⁹SECTION 30. Section 16.053, Water Code, is amended by adding Subdivisions

10 (10), (11), and (12) to Subsection (h) read as follows:

11 ~~(h)~~ (10) The regional water planning group may amend the regional
12 water plan after the plan has been approved by the board. Subdivisions (1)-(9) apply to an
13 amendment to the plan in the same manner as those subdivisions apply to the plan.

14 ~~(h)~~ (11) This subdivision applies only to an amendment to a regional
15 water plan approved by the board. This subdivision does not apply to the adoption of a
16 subsequent regional water plan for submission to the board as required by Subsection (i).

17 Notwithstanding Subdivision (10), the regional water planning group may amend the
18 plan in the manner provided by this subdivision if the executive administrator issues a
19 written determination that the amendment qualifies for adoption in the manner provided
20 by this

21 subdivision before the regional water planning group votes on adoption of the
22 amendment. An amendment qualifies for adoption in the manner provided by this
23 subdivision only if the amendment will not result in the overallocation of any existing or
24 planned source of water, does not relate to a new reservoir, and will not have a significant
25 effect on instream flows or freshwater inflows to bays and estuaries. If the executive
26 administrator determines that an amendment qualifies for adoption in the manner
27 provided by this subdivision, the regional water planning group may adopt the
28 amendment at a public meeting held in accordance with Chapter 551, Government Code.
29 The amendment must be placed on the agenda for the meeting, and notice of the meeting
30 must be given in the manner provided by Chapter 551, Government Code, at least two
31 weeks before the date the meeting is held. The public must be provided an opportunity to
32 comment on the amendment at the meeting.

62

Engrossed May 20, 2005
Mandi Cleland
Engrossing Clerk

By: Averitt

S.B. No. 1512

A BILL TO BE ENTITLED

AN ACT

relating to the use and management of surface water resources and regional water planning.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 5.506, Water Code, is amended to read as follows:

Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES.

SECTION 2. Section 5.506, Water Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) The commission must give written notice of the proposed action ~~[suspension]~~ to the Parks and Wildlife Department before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1) ~~[this section]~~. The commission shall give the Parks and Wildlife

1 Department an opportunity to submit comments on the proposed action
2 [~~suspension~~] for a period of 72 hours from receipt of the notice and
3 must consider those comments before issuing an order implementing
4 the proposed action [~~imposing the suspension~~].

5 (c) The commission may suspend a permit condition under
6 Subsection (a) or make water available temporarily under Subsection
7 (a-1) [~~this section~~] without notice except as required by
8 Subsection (b).

9 SECTION 3. Subsection (j), Section 5.701, Water Code, is
10 amended to read as follows:

11 (j) The fee for other uses of water not specifically named
12 in this section is \$1 per acre-foot, except that no political
13 subdivision may be required to pay fees to use water for recharge of
14 underground freshwater-bearing sands and aquifers or for abatement
15 of natural pollution. A fee is not required for a water right that
16 is [~~This fee is waived for applications for instream-use water~~
17 ~~rights~~] deposited into the Texas Water Trust.

18 SECTION 4. Section 11.002, Water Code, is amended by
19 amending Subdivision (1) and adding Subdivisions (15), (16), (17),
20 (18), and (19) to read as follows:

21 (1) "Commission" means the Texas [~~Natural Resource~~
22 ~~Conservation~~] Commission on Environmental Quality.

23 (15) "Environmental flow analysis" means the
24 application of a scientifically derived process for predicting the
25 response of an ecosystem to changes in instream flows or freshwater
26 inflows.

27 (16) "Environmental flow regime" means a schedule of

flow quantities that reflects seasonal and yearly fluctuations that typically would vary geographically, by specific location in a watershed, and that are shown to be adequate to support a sound ecological environment and to maintain the productivity, extent, and persistence of key aquatic habitats in and along the affected water bodies.

(17) "Environmental flow standards" means those requirements adopted by the commission under Section 11.1471.

(18) "Flows commission" means the Environmental Flows Commission.

(19) "Science advisory committee" means the Texas Environmental Flows Science Advisory Committee.

SECTION 5. Subsections (a) and (e), Section 11.023, Water Code, are amended to read as follows:

(a) To the extent that state water has not been set aside by the commission under Section 11.1471(a)(2) to meet downstream instream flow needs or freshwater inflow needs, state ~~State~~ water may be appropriated, stored, or diverted for:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

(2) agricultural uses and industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

(3) mining and recovery of minerals;

(4) hydroelectric power;

(5) navigation;

- (6) recreation and pleasure;
- (7) public parks; and
- (8) game preserves.

(e) The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated, stored, or diverted for that purpose, subject to the preferences prescribed in Section 11.024 of this code. The commission may authorize appropriation of a single amount or volume of water for more than one purpose of use. In the event that a single amount or volume of water is appropriated for more than one purpose of use, the total amount of water actually diverted for all of the authorized purposes may not exceed the total amount of water appropriated.

SECTION 6. Section 11.0235, Water Code, is amended by amending Subsections (c) and (e) and adding Subsections (d-1) through (d-5) and (f) to read as follows:

(c) The legislature has expressly required the commission while balancing all other public interests to consider and, to the extent practicable, provide for the freshwater inflows and instream flows necessary to maintain the viability of the state's streams, rivers, and bay and estuary systems in the commission's regular granting of permits for the use of state waters. As an essential part of the state's environmental flows policy, all permit conditions relating to freshwater inflows to affected bays and estuaries and instream flow needs must be subject to temporary suspension if necessary for water to be applied to essential beneficial uses during emergencies.

1 (d-1) The legislature finds that to provide certainty in
2 water management and development and to provide adequate protection
3 of the state's streams, rivers, and bays and estuaries, the state
4 must have a process with specific timelines for prompt action to
5 address environmental flow issues in the state's major basin and
6 bay systems, especially those systems in which unappropriated water
7 is still available.

8 (d-2) The legislature finds that:

9 (1) in those basins in which water is available for
10 appropriation, the commission should establish an environmental
11 set-aside below which water should not be available for
12 appropriation; and

13 (2) in those basins in which the unappropriated water
14 that will be set aside for instream flow and freshwater inflow
15 protection is not sufficient to fully satisfy the environmental
16 flow standards established by the commission, a variety of market
17 approaches, both public and private, for filling the gap must be
18 explored and pursued.

19 (d-3) The legislature finds that while the state has
20 pioneered tools to address freshwater inflow needs for bays and
21 estuaries, there are limitations to those tools in light of both
22 scientific and public policy evolution. To fully address bay and
23 estuary environmental flow issues, the foundation of work
24 accomplished by the state should be improved. While the state's
25 instream flow studies program appears to encompass a comprehensive
26 and scientific approach for establishing a process to assess
27 instream flow needs for rivers and streams across the state, more

extensive review and examination of the details of the program, which may not be fully developed until the program is under way, are needed to ensure an effective tool for evaluating riverine environmental flow conditions.

(d-4) The legislature finds that the management of water to meet instream flow and freshwater inflow needs should be evaluated on a regular basis and adapted to reflect both improvements in science related to environmental flows and future changes in projected human needs for water. In addition, the development of management strategies for addressing environmental flow needs should be an ongoing, adaptive process that considers and addresses local issues.

(d-5) The legislature finds that recommendations for state action to protect instream flows and freshwater inflows should be developed through a consensus-based, regional approach involving balanced representation of stakeholders and that such a process should be encouraged throughout the state.

(e) The fact that greater pressures and demands are being placed on the water resources of the state makes it of paramount importance to ensure [reexamine the process for ensuring] that these important priorities are effectively addressed by detailing how environmental flow standards are to be developed using the environmental studies that have been and are to be performed by the state and others and specifying in clear delegations of authority how those environmental flow standards will be integrated into the regional water planning and water permitting process [to the commission].

(f) The legislature recognizes that effective implementation of the approach provided by this chapter for protecting instream flows and freshwater inflows will require more effective water rights administration and enforcement systems than are currently available in most areas of the state.

SECTION 7. The heading to Section 11.0236, Water Code, is amended to read as follows:

Sec. 11.0236. [~~STUDY COMMISSION ON WATER FOR~~] ENVIRONMENTAL FLOWS COMMISSION.

SECTION 8. Section 11.0236, Water Code, is amended by amending Subsections (a), (b), (c), (e) through (j), (n), and (o) and adding Subsection (p) to read as follows:

(a) In recognition of the importance that the ecological soundness of our riverine, bay, and estuary systems and riparian lands has on the economy, health, and well-being of the state there is created the [~~Study Commission on Water for~~] Environmental Flows Commission.

(b) The flows [~~study~~] commission is composed of nine [~~15~~] members as follows:

(1) three [~~two~~] members appointed by the governor;

(2) three [~~five~~] members of the senate appointed by the lieutenant governor; and

(3) three [~~five~~] members of the house of representatives appointed by the speaker of the house of representatives[+]

[~~(4) the presiding officer of the commission or the presiding officer's designee,~~

1 ~~[(5) the chairman of the board or the chairman's~~
2 ~~designee; and~~

3 ~~[(6) the presiding officer of the Parks and Wildlife~~
4 ~~Commission or the presiding officer's designee].~~

5 (c) Of the members appointed under Subsection (b)(1):

6 (1) one member must be a member of the commission;

7 (2) one member must be a member of the board; and

8 (3) one member must be a member of the Parks and
9 Wildlife Commission ~~[(b)(2)].~~

10 ~~[(1) one member must represent a river authority or~~
11 ~~municipal water supply agency or authority;~~

12 ~~[(2) one member must represent an entity that is~~
13 ~~distinguished by its efforts in resource protection; and~~

14 ~~[(3) three members must be members of the senate].~~

15 (e) Each ~~[appointed]~~ member of the flows ~~[study]~~ commission
16 serves at the will of the person who appointed the member.

17 (f) The appointed senator with the most seniority and the
18 appointed house member with the most seniority serve together as
19 co-presiding officers of the flows ~~[study]~~ commission.

20 (g) A member of the flows ~~[study]~~ commission is not entitled
21 to receive compensation for service on the flows ~~[study]~~ commission
22 but is entitled to reimbursement of the travel expenses incurred by
23 the member while conducting the business of the flows ~~[study]~~
24 commission, as provided by the General Appropriations Act.

25 (h) The flows ~~[study]~~ commission may accept gifts and grants
26 from any source to be used to carry out a function of the flows
27 ~~[study]~~ commission.

(i) The commission shall provide staff support for the flows ~~[study]~~ commission.

(j) The flows ~~[study]~~ commission shall conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay, and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues that the flows ~~[study]~~ commission determines have importance and relevance to the protection of environmental flows. In evaluating the options for providing adequate environmental flows, the flows ~~[study]~~ commission shall take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers ~~[parks, game preserves]~~, and bay and estuary systems and are high priorities in the water management ~~[permitting]~~ process. The flows ~~[study]~~ commission shall specifically address:

(1) ways that the ecological soundness of those ~~[these]~~ systems will be ensured in the water rights administration and enforcement and water allocation processes; and

(2) appropriate methods to encourage persons voluntarily to convert reasonable amounts of existing water rights to use for environmental flow protection temporarily or permanently ~~[process]~~.

(n) The flows ~~[study]~~ commission may ~~[shall]~~ adopt rules, procedures, and policies as needed to administer this section, to

1 implement its responsibilities, and to exercise its authority under
2 Sections 11.02361 and 11.02362.

3 (o) Chapter 2110, Government Code, does not apply to the
4 size, composition, or duration of the flows commission.

5 (p) Not later than December 1, 2006, and every two years
6 thereafter, the flows commission shall issue and promptly deliver
7 to the governor, lieutenant governor, and speaker of the house of
8 representatives copies of a report summarizing:

9 (1) any hearings conducted by the flows commission;
10 (2) any studies conducted by the flows commission;
11 (3) any legislation proposed by the flows commission;
12 (4) progress made in implementing Sections 11.02361
13 and 11.02362; and

14 (5) any other findings and recommendations of the
15 flows commission [~~The study commission is abolished and this~~
16 ~~section expires September 1, 2005~~].

17 SECTION 9. Subchapter B, Chapter 11, Water Code, is amended
18 by adding Sections 11.02361 and 11.02362 to read as follows:

19 Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY
20 COMMITTEE. (a) The Texas Environmental Flows Science Advisory
21 Committee consists of at least five but not more than nine members
22 appointed by the flows commission.

23 (b) The flows commission shall appoint to the science
24 advisory committee persons who will provide an objective
25 perspective and diverse technical expertise, including expertise
26 in hydrology, hydraulics, water resources, aquatic and terrestrial
27 biology, geomorphology, geology, water quality, computer modeling,

1 and other technical areas pertinent to the evaluation of
2 environmental flows.

3 (c) Members of the science advisory committee serve
4 five-year terms expiring March 1. A vacancy on the science advisory
5 committee is filled by appointment by the co-presiding officers of
6 the flows commission for the unexpired term.

7 (d) Chapter 2110, Government Code, does not apply to the
8 size, composition, or duration of the science advisory committee.

9 (e) The science advisory committee shall:

10 (1) serve as an objective scientific body to advise
11 and make recommendations to the flows commission on issues relating
12 to the science of environmental flow protection; and

13 (2) develop recommendations to help provide overall
14 direction, coordination, and consistency relating to:

15 (A) environmental flow methodologies for bay and
16 estuary studies and instream flow studies;

17 (B) environmental flow programs at the
18 commission, the Parks and Wildlife Department, and the board; and

19 (C) the work of the basin and bay expert science
20 teams described in Section 11.02362.

21 (f) To assist the flows commission to assess the extent to
22 which the recommendations of the science advisory committee are
23 considered and implemented, the commission, the Parks and Wildlife
24 Department, and the board shall provide written reports to the
25 flows commission, at intervals determined by the flows commission,
26 that describe:

27 (1) the actions taken by each agency in response to

1 each recommendation; and

2 (2) for each recommendation not implemented, the
3 reason it was not implemented.

4 Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME
5 RECOMMENDATIONS. (a) For the purposes of this section, the flows
6 commission, not later than November 1, 2005, shall define the
7 geographical extent of each river basin and bay system in this state
8 for the sole purpose of developing environmental flow regime
9 recommendations under this section and adoption of environmental
10 flow standards under Section 11.1471.

11 (b) The flows commission shall give priority in descending
12 order to the following river basin and bay systems of the state for
13 the purpose of developing environmental flow regime
14 recommendations and adopting environmental flow standards:

15 (1) the river basin and bay system consisting of the
16 Trinity and San Jacinto Rivers and Galveston Bay and the river basin
17 and bay system consisting of the Sabine and Neches Rivers and Sabine
18 Lake Bay;

19 (2) the river basin and bay system consisting of the
20 Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the
21 river basin and bay system consisting of the Guadalupe, San
22 Antonio, and Aransas Rivers and Copano, Aransas, and San Antonio
23 Bays; and

24 (3) the river basin and bay system consisting of the
25 Nueces River and Corpus Christi and Baffin Bays, the river basin and
26 bay system consisting of the Rio Grande, the Rio Grande estuary, and
27 the Lower Laguna Madre, and the Brazos River and its associated bay

1 and estuary system.

2 (c) For the river basin and bay systems listed in Subsection
3 (b)(1):

4 (1) the flows commission shall appoint the basin and
5 bay area stakeholders committee not later than November 1, 2005;

6 (2) the basin and bay area stakeholders committee
7 shall establish a basin and bay expert science team not later than
8 March 1, 2006;

9 (3) the basin and bay expert science team shall
10 finalize environmental flow regime recommendations and submit them
11 to the basin and bay area stakeholders committee, the flows
12 commission, and the commission not later than March 1, 2007;

13 (4) the basin and bay area stakeholders committee
14 shall submit to the commission its comments on and recommendations
15 regarding the basin and bay expert science team's recommended
16 environmental flow regime not later than September 1, 2007; and

17 (5) the commission shall adopt the environmental flow
18 standards as provided by Section 11.1471 not later than September
19 1, 2008.

20 (d) The flows commission shall appoint the basin and bay
21 area stakeholders committees for the river basin and bay systems
22 listed in Subsection (b)(2) not later than September 1, 2006, and
23 shall appoint the basin and bay area stakeholders committees for
24 the river basin and bay systems listed in Subsection (b)(3) not
25 later than September 1, 2007. The flows commission shall establish
26 a schedule for the performance of the tasks listed in Subsections
27 (c)(2)-(5) with regard to the river basin and bay systems listed in

Subsections (b)(2) and (3) that will result in the adoption of environmental flow standards for that river basin and bay system by the commission as soon as is reasonably possible. Each basin and bay area stakeholders committee and basin and bay expert science team for a river basin and bay system listed in Subsection (b)(2) or (3) shall make recommendations to the flows commission with regard to the schedule applicable to that river basin and bay system. The flows commission shall consider the recommendations of the basin and bay area stakeholders committee and basin and bay expert science team as well as coordinate with, and give appropriate consideration to the recommendations of, the commission, the Parks and Wildlife Department, and the board in establishing the schedule.

(e) For a river basin and bay system or a river basin that does not have an associated bay system in this state not listed in Subsection (b), the flows commission shall establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards. The flows commission shall develop the schedule in consultation with the commission, the Parks and Wildlife Department, the board, and the pertinent basin and bay area stakeholders committee and basin and bay expert science team. The flows commission may, on its own initiative or on request, modify a schedule established under this subsection to be more responsive to particular circumstances, local desires, changing conditions, or time-sensitive conflicts. This subsection does not prohibit, in a river basin and bay system for which the flows commission has not yet established a schedule for the

development of environmental flow regime recommendations and the adoption of environmental flow standards, an effort to develop information on environmental flow needs and ways in which those needs can be met by a voluntary consensus-building process.

(f) The flows commission shall appoint a basin and bay area stakeholders committee for each river basin and bay system in this state for which a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards is specified by or established under Subsection (c), (d), or (e). Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay area stakeholders committee. Each committee must consist of at least 17 members. The members must represent appropriate stakeholders, including representatives of:

- (1) agricultural water users;
- (2) recreational water users, including coastal recreational anglers and businesses supporting water recreation;
- (3) municipalities;
- (4) soil and water conservation districts;
- (5) industrial water users, including representatives of both manufacturing and refining sectors;
- (6) commercial fishermen;
- (7) public interest groups;
- (8) regional water planning groups;
- (9) groundwater conservation districts;
- (10) river authorities and other conservation and reclamation districts with jurisdiction over surface water; and

1 (11) environmental interests.

2 (g) Members of a basin and bay area stakeholders committee
3 serve five-year terms expiring March 1. If a vacancy occurs on a
4 committee, the remaining members of the committee by majority vote
5 shall appoint a member to serve the remainder of the unexpired term.

6 (h) Meetings of a basin and bay area stakeholders committee
7 must be open to the public.

8 (i) Each basin and bay area stakeholders committee shall
9 establish a basin and bay expert science team for the river basin
10 and bay system for which the committee is established. The basin
11 and bay expert science team must be established not later than six
12 months after the date the basin and bay area stakeholders committee
13 is established. Chapter 2110, Government Code, does not apply to
14 the size, composition, or duration of a basin and bay expert science
15 team. Each basin and bay expert science team must be composed of
16 technical experts with special expertise regarding the river basin
17 and bay system or regarding the development of environmental flow
18 regimes. A person may serve as a member of more than one basin and
19 bay expert science team at the same time.

20 (j) The members of a basin and bay expert science team serve
21 five-year terms expiring April 1. A vacancy on a basin and bay
22 expert science team is filled by appointment by the pertinent basin
23 and bay area stakeholders committee to serve the remainder of the
24 unexpired term.

25 (k) The science advisory committee shall appoint one of its
26 members to serve as a liaison to each basin and bay expert science
27 team to facilitate coordination and consistency in environmental

flow activities throughout the state. The commission, the Parks and Wildlife Department, and the board shall provide technical assistance to each basin and bay expert science team, including information about the studies conducted under Sections 16.058 and 16.059, and may serve as nonvoting members of the basin and bay expert science team to facilitate the development of environmental flow regime recommendations.

(l) Where reasonably practicable, meetings of a basin and bay expert science team must be open to the public.

(m) Each basin and bay expert science team shall develop environmental flow analyses and a recommended environmental flow regime for the river basin and bay system for which the team is established through a collaborative process designed to achieve a consensus. In developing the analyses and recommendations, the science team must consider all reasonably available science, without regard to the need for the water for other uses, and the science team's recommendations must be based solely on the best science available. For the Rio Grande below Fort Quitman, any uses attributable to Mexican water flows must be excluded from environmental flow regime recommendations.

(n) Each basin and bay expert science team shall submit its environmental flow analyses and environmental flow regime recommendations to the pertinent basin and bay area stakeholders committee, the flows commission, and the commission in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). The basin and bay area stakeholders committee and the flows commission may not change the environmental

flow analyses or environmental flow regime recommendations of the basin and bay expert science team.

(o) Each basin and bay area stakeholders committee shall review the environmental flow analyses and environmental flow regime recommendations submitted by the committee's basin and bay expert science team and shall consider them in conjunction with other factors, including the present and future needs for water for other uses related to water supply planning in the pertinent river basin and bay system. For the Rio Grande, the basin and bay area stakeholders committee shall also consider the water accounting requirements for any international water-sharing treaty, minutes, and agreements applicable to the Rio Grande and the effects on allocation of water by the Rio Grande watermaster in the middle and lower Rio Grande. The Rio Grande basin and bay expert science team may not recommend any environmental flow regime that would result in a violation of a treaty or court decision. The basin and bay area stakeholders committee shall develop recommendations regarding environmental flow standards and strategies to meet the environmental flow standards and submit those recommendations to the commission and to the flows commission in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). In developing its recommendations, the basin and bay area stakeholders committee shall operate on a consensus basis to the maximum extent possible.

(p) In recognition of the importance of adaptive management, after submitting its recommendations regarding environmental flow standards and strategies to meet the

environmental flow standards to the commission, each basin and bay area stakeholders committee, with the assistance of the pertinent basin and bay expert science team, shall prepare and submit for approval by the flows commission a work plan. The work plan must:

(1) establish a periodic review of the basin and bay environmental flow analyses and environmental flow regime recommendations, environmental flow standards, and strategies, to occur at least once every 10 years;

(2) prescribe specific monitoring, studies, and activities; and

(3) establish a schedule for continuing the validation or refinement of the basin and bay environmental flow analyses and environmental flow regime recommendations, the environmental flow standards adopted by the commission, and the strategies to achieve those standards.

(q) In accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e), the flows commission, with input from the science advisory committee, shall review the environmental flow analyses and environmental flow regime recommendations submitted by each basin and bay expert science team. If appropriate, the flows commission shall submit comments on the analyses and recommendations to the commission for use by the commission in adopting rules under Section 11.1471. Comments must be submitted not later than six months after the date of receipt of the analyses and recommendations.

(r) In the event the commission, by permit or order, has established an estuary advisory council, that council may continue

1 in full force and effect.

2 SECTION 10. Subsections (a) and (b), Section 11.0237, Water
3 Code, are amended to read as follows:

4 (a) The commission may not issue a new permit for instream
5 flows dedicated to environmental needs or bay and estuary inflows.
6 The ~~[This section does not prohibit the]~~ commission may approve
7 ~~[from issuing]~~ an application to amend ~~[amendment to]~~ an existing
8 permit or certificate of adjudication to change the use to or add a
9 use for instream flows dedicated to environmental needs or bay and
10 estuary inflows.

11 (b) This section does not alter the commission's
12 obligations under Section 11.042(b), 11.042(c), 11.046(b),
13 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491,
14 11.150, 11.152, 16.058, or 16.059.

15 SECTION 11. Subsection (b), Section 11.082, Water Code, is
16 amended to read as follows:

17 (b) The state may recover the penalties prescribed in
18 Subsection (a) ~~[of this section]~~ by suit brought for that purpose in
19 a court of competent jurisdiction. The state may seek those
20 penalties regardless of whether a watermaster has been appointed
21 for the water division, river basin, or segment of a river basin
22 where the unlawful use is alleged to have occurred.

23 SECTION 12. Section 11.0841, Water Code, is amended by
24 adding Subsection (c) to read as follows:

25 (c) For purposes of this section, the Parks and Wildlife
26 Department has:

27 (1) the rights of a holder of a water right that is

held in the Texas Water Trust, including the right to file suit in a civil court to prevent the unlawful use of such a right;

(2) the right to act in the same manner that a holder of a water right may act to protect the holder's rights in seeking to prevent any person from appropriating water in violation of a set-aside established by the commission under Section 11.1471 to meet instream flow needs or freshwater inflow needs; and

(3) the right to file suit in a civil court to prevent the unlawful use of a set-aside established under Section 11.1471.

SECTION 13. Subsection (a), Section 11.0842, Water Code, is amended to read as follows:

(a) If a person violates this chapter, a rule or order adopted under this chapter or Section 16.236 [~~of this code~~], or a permit, certified filing, or certificate of adjudication issued under this chapter, the commission may assess an administrative penalty against that person as provided by this section. The commission may assess an administrative penalty for a violation relating to a water division or a river basin or segment of a river basin regardless of whether a watermaster has been appointed for the water division or river basin or segment of the river basin.

SECTION 14. Subsection (a), Section 11.0843, Water Code, is amended to read as follows:

(a) Upon witnessing a violation of this chapter or a rule or order or a water right issued under this chapter, the executive director or a person designated by the executive director, including a watermaster or the watermaster's deputy, [as defined by ~~commission rule,~~ may issue the alleged violator a field citation

1 alleging that a violation has occurred and providing the alleged
2 violator the option of either:

3 (1) without admitting to or denying the alleged
4 violation, paying an administrative penalty in accordance with the
5 predetermined penalty amount established under Subsection (b) [~~of~~
6 ~~this section~~] and taking remedial action as provided in the
7 citation; or

8 (2) requesting a hearing on the alleged violation in
9 accordance with Section 11.0842 [~~of this code~~].

10 SECTION 15. Subsection (c), Section 11.126, Water Code, is
11 amended to read as follows:

12 (c) If the application proposes construction of a dam
13 greater than six feet in height, measured from the channel invert
14 elevation to the top of the dam, either for diversion or storage,
15 the executive director may also require filing a copy of all plans
16 and specifications and a copy of the engineer's field notes of any
17 survey of the lake or reservoir. No work on the project shall
18 proceed until approval of the plans is obtained from the executive
19 director.

20 SECTION 16. Subsection (b), Section 11.134, Water Code, is
21 amended to read as follows:

22 (b) The commission shall grant the application only if:

23 (1) the application conforms to the requirements
24 prescribed by this chapter and is accompanied by the prescribed
25 fee;

26 (2) unappropriated water is available in the source of
27 supply;

1 (3) the proposed appropriation:

2 (A) is intended for a beneficial use;

3 (B) does not impair existing water rights or
4 vested riparian rights;

5 (C) is not detrimental to the public welfare;

6 (D) considers any applicable environmental flow
7 standards established under Section 11.1471 and, if applicable, the
8 assessments performed under Sections 11.147(d) and (e) and Sections
9 11.150, 11.151, and 11.152; and

10 (E) addresses a water supply need in a manner
11 that is consistent with the state water plan and the relevant
12 approved regional water plan for any area in which the proposed
13 appropriation is located, unless the commission determines that
14 conditions warrant waiver of this requirement; and

15 (4) the applicant has provided evidence that
16 reasonable diligence will be used to avoid waste and achieve water
17 conservation as defined by [~~Subdivision (8)(B),~~] Section
18 11.002(8)(B) [~~11.002~~].

19 SECTION 17. Section 11.147, Water Code, is amended by
20 amending Subsections (b), (d), and (e) and adding Subsections
21 (e-1), (e-2), and (e-3) to read as follows:

22 (b) In its consideration of an application for a permit to
23 store, take, or divert water, the commission shall assess the
24 effects, if any, of the issuance of the permit on the bays and
25 estuaries of Texas. For permits issued within an area that is 200
26 river miles of the coast, to commence from the mouth of the river
27 thence inland, the commission shall include in the permit any

conditions considered necessary to maintain freshwater inflows to any affected bay and estuary system, to the extent practicable when considering all public interests and the studies mandated by Section 16.058 as evaluated under Section 11.1491[~~those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system~~].

(d) In its consideration of an application to store, take, or divert water, the commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain existing instream uses and water quality of the stream or river to which the application applies. In determining what conditions to include in the permit under this subsection, the commission shall consider among other factors:

(1) the studies mandated by Section 16.059; and

(2) any water quality assessment performed under Section 11.150.

(e) The commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain fish and wildlife habitats. In determining what conditions to include in the permit under this subsection, the commission shall consider any assessment performed under Section 11.152.

(e-1) Any permit for a new appropriation of water or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted must include a provision allowing the commission to adjust the conditions included

in the permit or amended water right to provide for protection of
instream flows or freshwater inflows. With respect to an amended
water right, the provision may not allow the commission to adjust a
condition of the amendment other than a condition that applies only
to the increase in the amount of water to be stored, taken, or
diverted authorized by the amendment. This subsection does not
affect an appropriation of or an authorization to store, take, or
divert water under a permit or amendment to a water right issued
before September 1, 2005. The commission shall adjust the
conditions if the commission determines, through an expedited
public comment process, that such an adjustment is appropriate to
achieve compliance with applicable environmental flow standards
adopted under Section 11.1471. The adjustment:

(1) in combination with any previous adjustments made
under this subsection may not increase the amount of the
pass-through or release requirement for the protection of instream
flows or freshwater inflows by more than 12.5 percent of the
annualized total of that requirement contained in the permit as
issued or of that requirement contained in the amended water right
and applicable only to the increase in the amount of water
authorized to be stored, taken, or diverted under the amended water
right;

(2) must be based on appropriate consideration of the
priority dates and diversion locations of any other water rights
granted in the same river basin that are subject to adjustment under
this subsection; and

(3) must be based on appropriate consideration of any

voluntary contributions to the Texas Water Trust that contribute toward meeting the environmental flow standards.

(e-2) Any water right holder making such donation shall be entitled to appropriate credit of such benefits against adjustments of his water right pursuant to Subsection (e-1)(1).

(e-3) Notwithstanding Subsections (b)-(e), for the purpose of determining the environmental flow conditions necessary to maintain freshwater inflows to an affected bay and estuary system, existing instream uses and water quality of a stream or river, or fish and aquatic wildlife habitats, the commission shall apply any applicable environmental flow standard, including any environmental flow set-aside, adopted under Section 11.1471 instead of considering the factors specified by those subsections.

SECTION 18. Subchapter D, Chapter 11, Water Code, is amended by adding Section 11.1471 to read as follows:

Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

(a) The commission by rule shall:

(1) adopt appropriate environmental flow standards for each river basin and bay system in this state that are adequate to support a sound ecological environment, to the maximum extent reasonable considering other public interests and other relevant factors;

(2) establish an amount of unappropriated water, if available, to be set aside to satisfy the environmental flow standards to the maximum extent reasonable when considering human water needs; and

(3) establish procedures for implementing an

adjustment of the conditions included in a permit or an amended water right as provided by Sections 11.147(e-1) and (e-2).

(b) In adopting environmental flow standards for a river basin and bay system under Subsection (a)(1), the commission shall consider:

(1) the definition of the geographical extent of the river basin and bay system adopted by the flows commission under Section 11.02362(a);

(2) the schedule for the adoption of environmental flow standards for the river basin and bay system established by the flows commission under Section 11.02362(d) or (e), if applicable;

(3) the environmental flow analyses and the recommended environmental flow regime developed by the applicable basin and bay expert science team under Section 11.02362(m);

(4) the recommendations regarding environmental flow standards and strategies to meet the flow standards developed by the applicable basin and bay area stakeholders committee under Section 11.02362(o);

(5) the specific characteristics of the river basin and bay system;

(6) economic factors;

(7) the human and other competing water needs in the river basin and bay system;

(8) all reasonably available scientific information, including any scientific information provided by the science advisory committee; and

(9) any other appropriate information.

(c) Environmental flow standards adopted under Subsection (a)(1) must consist of a schedule of flow quantities, reflecting seasonal and yearly fluctuations that may vary geographically by specific location in a river basin and bay system.

(d) As provided by Section 11.023, the commission may not issue a permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted if the issuance of the permit or amendment would impair an environmental flow set-aside established under Subsection (a)(2). A permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted that is issued after the adoption of an applicable environmental flow set-aside must contain appropriate conditions to ensure protection of the environmental flow set-aside.

(e) An environmental flow set-aside established under Subsection (a)(2) for a river basin and bay system other than the middle and lower Rio Grande must be assigned a priority date corresponding to the date the commission receives environmental flow regime recommendations from the applicable basin and bay expert science team and be included in the appropriate water availability models in connection with an application for a permit for a new appropriation or for an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted.

(f) An environmental flow standard or environmental flow set-aside adopted under Subsection (a) may be altered by the

commission in a rulemaking process undertaken in accordance with a
schedule established by the commission. The commission's schedule
may not provide for the rulemaking process to occur more frequently
than once every 10 years unless the applicable work plan approved by
the flows commission under Section 11.02362(p) provides for a
periodic review under that section to occur more frequently than
once every 10 years. In that event, the commission may provide for
the rulemaking process to be undertaken in conjunction with the
periodic review if the commission determines that schedule to be
appropriate.

SECTION 19. The heading to Section 11.148, Water Code, is amended to read as follows:

Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND
EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR
ENVIRONMENTAL FLOWS.

SECTION 20. Section 11.148, Water Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) State water that is set aside by the commission to
meet the needs for freshwater inflows to affected bays and
estuaries and instream uses under Section 11.1471(a)(2) may be made
available temporarily for other essential beneficial uses if the
commission finds that an emergency exists that cannot practically
be resolved in another way.

(b) Before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under
Subsection (a-1) [of this section], it must give written notice to

1 the Parks and Wildlife Department of the proposed action
 2 [~~suspension~~]. The commission shall give the Parks and Wildlife
 3 Department an opportunity to submit comments on the proposed action
 4 [~~suspension~~] within 72 hours from such time and the commission
 5 shall consider those comments before issuing its order implementing
 6 the proposed action [~~imposing the suspension~~].

7 (c) The commission may suspend the permit condition under
 8 Subsection (a) or make water available temporarily under Subsection
 9 (a-1) without notice to any other interested party other than the
 10 Parks and Wildlife Department as provided by Subsection (b) [~~of~~
 11 ~~this section~~]. However, all affected persons shall be notified
 12 immediately by publication, and a hearing to determine whether the
 13 suspension should be continued shall be held within 15 days of the
 14 date on which the order to suspend is issued.

15 SECTION 21. Subsection (a), Section 11.1491, Water Code, is
 16 amended to read as follows:

17 (a) The Parks and Wildlife Department and the commission
 18 shall have joint responsibility to review the studies prepared
 19 under Section 16.058 [~~of this code~~], to determine inflow conditions
 20 necessary for the bays and estuaries, and to provide information
 21 necessary for water resources management. Each agency shall
 22 designate an employee to share equally in the oversight of the
 23 program. Other responsibilities shall be divided between the Parks
 24 and Wildlife Department and the commission to maximize present
 25 in-house capabilities of personnel and to minimize costs to the
 26 state. Each agency shall have reasonable access to all information
 27 produced by the other agency. Publication of reports completed

under this section shall be submitted for comment to ~~[both]~~ the commission, ~~[and]~~ the Parks and Wildlife Department, the flows commission, the science advisory committee, and any applicable basin and bay area stakeholders committee and basin and bay expert science team.

SECTION 22. Subsection (g), Section 11.329, Water Code, is amended to read as follows:

(g) The commission may not assess costs under this section against a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts or against a holder of a water right placed in the Texas Water Trust for a term of at least 20 years. ~~[This subsection is not intended to affect in any way the fees assessed on a water right holder by the commission under Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993. For purposes of Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts shall be assessed fees at the same rate per acre-foot charged to a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of more than two megawatts.]~~

SECTION 23. Subsection (e), Section 11.404, Water Code, is amended to read as follows:

(e) The court may not assess costs and expenses under this section against:

1 (1) a holder of a non-priority hydroelectric right
2 that owns or operates privately owned facilities that collectively
3 have a capacity of less than two megawatts; or

4 (2) a holder of a water right placed in the Texas Water
5 Trust for a term of at least 20 years.

6 SECTION 24. Subchapter I, Chapter 11, Water Code, is
7 amended by adding Section 11.4531 to read as follows:

8 Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For
9 each river basin or segment of a river basin for which the executive
10 director appoints a watermaster under this subchapter, the
11 executive director shall appoint a watermaster advisory committee
12 consisting of at least nine but not more than 15 members. A member
13 of the advisory committee must be a holder of a water right or a
14 representative of a holder of a water right in the river basin or
15 segment of the river basin for which the watermaster is appointed.
16 In appointing members to the advisory committee, the executive
17 director shall consider:

18 (1) geographic representation;
19 (2) amount of water rights held;
20 (3) different types of holders of water rights and
21 users, including water districts, municipal suppliers, irrigators,
22 and industrial users; and

23 (4) experience and knowledge of water management
24 practices.

25 (b) An advisory committee member is not entitled to
26 reimbursement of expenses or to compensation.

27 (c) An advisory committee member serves a two-year term

1 expiring August 31 of each odd-numbered year and holds office until
2 a successor is appointed.

3 (d) The advisory committee shall meet within 30 days after
4 the date the initial appointments have been made and shall select a
5 presiding officer to serve a one-year term. The committee shall
6 meet regularly as necessary.

7 (e) The advisory committee shall:

8 (1) make recommendations to the executive director
9 regarding activities of benefit to the holders of water rights in
10 the administration and distribution of water to holders of water
11 rights in the river basin or segment of the river basin for which
12 the watermaster is appointed;

13 (2) review and comment to the executive director on
14 the annual budget of the watermaster operation; and

15 (3) perform other advisory duties as requested by the
16 executive director regarding the watermaster operation or as
17 requested by holders of water rights and considered by the
18 committee to benefit the administration of water rights in the
19 river basin or segment of the river basin for which the watermaster
20 is appointed.

21 SECTION 25. Section 11.454, Water Code, is amended to read
22 as follows:

23 Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER.
24 Section 11.327 applies to the duties and authority of a watermaster
25 appointed for a river basin or segment of a river basin under this
26 subchapter in the same manner as that section applies to the duties
27 and authority of a watermaster appointed for a water division under

1 Subchapter G ~~[A watermaster as the agent of the commission and under~~
2 ~~the executive director's supervision shall.~~

3 ~~[(1) divide the water of the streams or other sources~~
4 ~~of supply of his segment or basin in accordance with the authorized~~
5 ~~water rights,~~

6 ~~[(2) regulate or cause to be regulated the controlling~~
7 ~~works of reservoirs and diversion works in time of water shortage,~~
8 ~~as is necessary because of the rights existing in the streams of his~~
9 ~~segment or basin, or as is necessary to prevent the waste of water~~
10 ~~or its diversion, taking, storage, or use in excess of the~~
11 ~~quantities to which the holders of water rights are lawfully~~
12 ~~entitled, and~~

13 ~~[(3) perform any other duties and exercise any~~
14 ~~authority directed by the commission].~~

15 SECTION 26. Section 11.455, Water Code, is amended to read
16 as follows:

17 Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER
18 [ASSESSMENTS]. (a) Section 11.329 applies to the payment of the
19 compensation and expenses of a watermaster appointed for a river
20 basin or segment of a river basin under this subchapter in the same
21 manner as that section applies to the payment of the compensation
22 and expenses of a watermaster appointed for a water division under
23 Subchapter G.

24 (b) The executive director shall deposit the assessments
25 collected under this section to the credit of the watermaster fund.

26 (c) Money deposited under this section to the credit of the
27 watermaster fund may be used only for the purposes specified by

1 Section 11.3291 with regard to the watermaster operation under this
2 subchapter with regard to which the assessments were collected [~~The~~
3 ~~commission may assess the costs of the watermaster against all~~
4 ~~persons who hold water rights in the river basin or segment of the~~
5 ~~river basin under the watermaster's jurisdiction in accordance with~~
6 ~~Section 11.329 of this code~~].

7 SECTION 27. Subchapter F, Chapter 15, Water Code, is
8 amended by adding Section 15.4063 to read as follows:

9 Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may
10 authorize the use of money in the research and planning fund:

11 (1) to compensate the members of the Texas
12 Environmental Flows Science Advisory Committee established under
13 Section 11.02361 for attendance and participation at meetings of
14 the committee and for transportation, meals, lodging, or other
15 travel expenses associated with attendance at those meetings as
16 provided by the General Appropriations Act;

17 (2) for contracts with cooperating state and federal
18 agencies and universities and with private entities as necessary to
19 provide technical assistance to enable the Texas Environmental
20 Flows Science Advisory Committee and the basin and bay expert
21 science teams established under Section 11.02362 to perform their
22 statutory duties;

23 (3) to compensate the members of the expert science
24 teams created pursuant to Section 11.02362(i) for attendance and
25 participation at meetings of the teams and for transportation,
26 meals, lodging, or other travel expenses associated with attendance
27 at those meetings as provided by the General Appropriations Act;

1 and

2 (4) for contracts with political subdivisions
 3 designated as representatives of stakeholder committees
 4 established pursuant to Section 11.02362 to fund all or part of the
 5 administrative expenses for conducting meetings of the stakeholder
 6 committee or the associated expert science team.

7 SECTION 28. Section 15.7031, Water Code, is amended by
 8 amending Subsection (c) and adding Subsection (e) to read as
 9 follows:

10 (c) The dedication of any water rights placed in trust must
 11 be reviewed and approved by the commission, in consultation with
 12 the board, ~~and~~ the Parks and Wildlife Department, and the
 13 Environmental Flows Commission. In addition, the Department of
 14 Agriculture and the basin and bay area stakeholders committee and
 15 basin and bay expert science team established under Section
 16 11.02362 for the river basin and bay system to which the water right
 17 pertains may provide input to the commission, as appropriate,
 18 during the review and approval process for dedication of water
 19 rights.

20 (e) While a water right is held in the trust, the water
 21 authorized for beneficial use under the terms of the water right is
 22 considered to be held for instream flows, water quality, fish and
 23 wildlife habitat, bay and estuary inflows, or other environmental
 24 uses without the need for a permit amendment. After the water right
 25 is withdrawn in whole or in part from the trust, the use of the water
 26 right or portion of the water right withdrawn must be in accordance
 27 with the terms of the water right.

SECTION 29. Subsection (h), Section 16.053, Water Code, is amended by adding Subdivisions (10), (11), and (12) to read as follows:

(10) The regional water planning group may amend the regional water plan after the plan has been approved by the board. Subdivisions (1)-(9) apply to an amendment to the plan in the same manner as those subdivisions apply to the plan.

(11) This subdivision applies only to an amendment to a regional water plan approved by the board. This subdivision does not apply to the adoption of a subsequent regional water plan for submission to the board as required by Subsection (i). Notwithstanding Subdivision (10), the regional water planning group may amend the plan in the manner provided by this subdivision if the executive administrator issues a written determination that the amendment qualifies for adoption in the manner provided by this subdivision before the regional water planning group votes on adoption of the amendment. An amendment qualifies for adoption in the manner provided by this subdivision only if the amendment will not result in the overallocation of any existing or planned source of water, does not relate to a new reservoir, and will not have a significant effect on instream flows or freshwater inflows to bays and estuaries. If the executive administrator determines that an amendment qualifies for adoption in the manner provided by this subdivision, the regional water planning group may adopt the amendment at a public meeting held in accordance with Chapter 551, Government Code. The amendment must be placed on the agenda for the meeting, and notice of the meeting must be given in the manner

1 provided by Chapter 551, Government Code, at least two weeks before
2 the date the meeting is held. The public must be provided an
3 opportunity to comment on the amendment at the meeting.

4 (12) Notwithstanding Subdivisions (10) and (11), a
5 regional water planning group may revise a regional water plan
6 approved by the board without complying with Subdivisions (1)-(9)
7 or obtaining a determination from the executive administrator that
8 the revision qualifies for adoption in the manner provided by
9 Subdivision (11) if the revision consists only of substituting an
10 alternative water management strategy previously evaluated in the
11 planning process and already contained in the current regional
12 water plan for a water management strategy recommended in the plan.
13 The regional water planning group may adopt the revision to the
14 regional water plan at a public meeting held in accordance with
15 Chapter 551, Government Code.

16 SECTION 30. Subsection (d), Section 16.059, Water Code, is
17 amended to read as follows:

18 (d) The priority studies shall be completed not later than
19 December 31, 2014 ~~[2010]~~. The Parks and Wildlife Department, the
20 commission, and the board shall establish a work plan that
21 prioritizes the studies and that sets interim deadlines providing
22 for publication of flow determinations for individual rivers and
23 streams on a reasonably consistent basis throughout the prescribed
24 study period. Before publication, completed studies shall be
25 submitted for comment to the commission, the board, and the Parks
26 and Wildlife Department.

27 SECTION 31. Subsection (h), Section 26.0135, Water Code, as

amended by Chapters 234 and 965, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(h) The commission shall apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section from users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed. Irrigation water rights, ~~[and]~~ non-priority hydroelectric rights of a water right holder that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts, and water rights held in the Texas Water Trust for terms of at least 20 years will not be subject to this assessment. The cost to river authorities and others to conduct water quality monitoring and assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality monitoring, assessment, and associated costs. The rules shall ensure that water users and wastewater dischargers do not pay excessive amounts, that program funds are equitably apportioned among basins, that a river authority may recover no more than the actual costs of administering the water quality management programs called for in this section, and that no municipality shall be assessed cost for any efforts that duplicate water quality management activities described in Section 26.177 ~~[of this chapter]~~. The rules concerning the apportionment and assessment of reasonable costs

1 shall provide for a recovery of not more than \$5,000,000 annually.
2 Costs recovered by the commission are to be deposited to the credit
3 of the water resource management account and may be used only to
4 accomplish the purposes of this section. The commission may apply
5 not more than 10 percent of the costs recovered annually toward the
6 commission's overhead costs for the administration of this section
7 and the implementation of regional water quality assessments. The
8 commission, with the assistance and input of each river authority,
9 shall file a written report accounting for the costs recovered
10 under this section with the governor, the lieutenant governor, and
11 the speaker of the house of representatives on or before December 1
12 of each even-numbered year.

13 SECTION 32. Subsections (d), (k), (l), and (m), Section
14 11.0236, Subsection (c), Section 11.0237, and Subsection (b),
15 Section 11.1491, Water Code, are repealed.

16 SECTION 33. The Study Commission on Water for Environmental
17 Flows is abolished on the effective date of this Act.

18 SECTION 34. (a) The governor, lieutenant governor, and
19 speaker of the house of representatives shall appoint the initial
20 members of the Environmental Flows Commission as provided by
21 Section 11.0236, Water Code, as amended by this Act, as soon as
22 practicable on or after the effective date of this Act.

23 (b) As soon as practicable after taking office, the initial
24 members of the Environmental Flows Commission shall appoint the
25 initial members of the Texas Environmental Flows Science Advisory
26 Committee as provided by Section 11.02361, Water Code, as added by
27 this Act. The terms of the initial members of the committee expire

1 March 1, 2010.

2 (c) The Environmental Flows Commission shall appoint the
3 members of each basin and bay area stakeholders committee as
4 provided by Section 11.02362, Water Code, as added by this Act. The
5 terms of the initial members of each committee expire March 1 of the
6 fifth year that begins after the year in which the initial
7 appointments are made.

8 (d) Each basin and bay area stakeholders committee shall
9 appoint the members of the basin and bay expert science team for the
10 river basin and bay system for which the committee is established as
11 provided by Section 11.02362, Water Code, as added by this Act. The
12 terms of the initial members of each team expire April 1 of the
13 fifth year that begins after the year in which the initial
14 appointments are made.

15 (e) The executive director of the Texas Commission on
16 Environmental Quality shall appoint the members of the watermaster
17 advisory committee under Section 11.4531, Water Code, as added by
18 this Act, for each river basin or segment of a river basin for which
19 the executive director appoints a watermaster under Subchapter I,
20 Chapter 11, Water Code. The terms of the initial members of each
21 committee expire August 31 of the first odd-numbered year that
22 begins after the year in which the initial appointments are made.

23 SECTION 35. The changes in law made by this Act relating to
24 a permit for a new appropriation of water or to an amendment to an
25 existing water right that increases the amount of water authorized
26 to be stored, taken, or diverted apply only to:

27 (1) water appropriated under a permit for a new

1 appropriation of water the application for which is pending with
2 the Texas Commission on Environmental Quality on the effective date
3 of this Act or is filed with the commission on or after that date; or

4 (2) the increase in the amount of water authorized to
5 be stored, taken, or diverted under an amendment to an existing
6 water right that increases the amount of water authorized to be
7 stored, taken, or diverted and the application for which is pending
8 with the Texas Commission on Environmental Quality on the effective
9 date of this Act or is filed with the commission on or after that
10 date.

11 SECTION 36. This Act takes effect September 1, 2005.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 16, 2005

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB1512 by Averitt (Relating to the use and management of surface water resources.),
Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for SB1512, Committee Report 1st House, Substituted: a negative impact of (\$3,422,366) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	(\$1,577,433)
2007	(\$1,844,933)
2008	(\$2,013,433)
2009	(\$2,001,933)
2010	(\$2,013,433)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	(\$1,577,433)	8.0
2007	(\$1,844,933)	11.0
2008	(\$2,013,433)	14.0
2009	(\$2,001,933)	14.0
2010	(\$2,013,433)	14.0

Fiscal Analysis

The bill would provide that existing water rights could be converted temporarily or permanently to use for environmental flow protection. The bill would replace the Study Commission on Water for Environmental Flows to the Texas Environmental Flows Commission (TEFC). The TCEQ would continue to provide staff support to the modified TEFC. The TEFC would develop flow regime recommendations based on a priority schedule by river basin. The bill would create the Texas Environmental Flows Science Advisory Committee (TEFSAC) and the Basin and Bay Area Stakeholders Committee (BBASC). The TCEQ, the Texas Water Development Board (TWDB), and the Texas Parks and Wildlife Department (TPWD) would be responsible for coordinating with the TEFC, TEFSAC, and the BBASC, providing reports regarding the groups' recommendations, and providing technical assistance.

The bill would allow the TWDB to use money in the research and planning fund of the Water Assistance Fund No. 480 to compensate members of the TEFSAC and the Bay and Basin Expert Science Teams (BBEST) for meeting expenses. It would also allow the TWDB to pay contract costs for technical assistance to TFEC advisory committees and the BBESTs and costs incurred by political subdivisions designated as representatives of the BBASC.

Methodology

To provide technical support to the committees established in the bill, complete hydrological modeling, geographic information systems applications related to instream flows, and to evaluate economic factors, 6.0 additional FTEs and related costs are expected to be needed by the TCEQ. In addition, the TCEQ would have contract service costs of \$250,000 per year to upgrade and maintain water availability models. Total costs for the TCEQ would range from a high of \$718,433 in fiscal year 2006 to \$414,933 in later years.

The TWDB also expects to need additional staff and related costs to provide data and expertise to the committees established in the bill, as well as funding for costs incurred by the TEFSAC, BBEST, as well as administrative costs for designated political subdivisions and studies relating to bays and estuaries. The agency expects that the number of FTEs needed would increase from 2.0 in fiscal year 2006 to 8.0 FTEs in fiscal year 2008. Total costs to implement the bill would range from \$859,000 in fiscal year 2006 to \$1,598,500 in fiscal year 2010.

No significant fiscal implications to the TPWD are anticipated to result from the bill's provisions relating to the agency's coordination with newly created councils and committees.

Local Government Impact

Councils and committee created, expanded or modified by the bill could incur administrative costs. However, these costs are not expected to be significant, since state agencies are required to provide technical and staff support to these entities.

Source Agencies: 580 Water Development Board, 582 Commission on Environmental Quality

LBB Staff: JOB, SD, WK, ZS, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 10, 2005

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB1512 by Averitt (Relating to the use and management of surface water resources.), **As Introduced**

<p>No significant fiscal implication to the State is anticipated.</p>
--

The bill would define "developed water" to be water not in the watercourse or stream but for the efforts of the developer and which is intended for subsequent diversion and use by the developer. The definition would apply to groundwater and surface water which has been conveyed from another basin, another state, or the bays and arms of the Gulf of Mexico. The bill's passage is not expected to result in significant fiscal implications to state agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, WK, ZS, TL

S.B. No. 1512

By Averitt

A BILL TO BE ENTITLED

AN ACT: relating to the use and management of surface water resources.

MAR 10 2005 Filed with the Secretary of the Senate
MAR 22 2005 Read and referred to Committee on NATURAL RESOURCES
Reported favorably _____
MAY 17 2005 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.
Ordered not printed
Laid before the Senate
MAY 20 2005 Senate and Constitutional Rules to permit consideration suspended by: { ~~BY A VIVA VOCE VOTE~~
unanimous consent
_____ yeas, _____ nays
MAY 20 2005 Read second time, Amended, and ordered engrossed by: { ~~unanimous consent~~
a viva voce vote
_____ yeas, _____ nays
MAY 20 2005 Senate and Constitutional 3 Day Rule suspended by a vote of 31 yeas, 0 nays.
MAY 20 2005 Read third time, _____, and passed by: { ~~A viva voce vote~~
31 yeas, 0 nays
AMEND CAPTION TO CONFORM
TO THE BODY OF THE BILL
Latey Spaw
SECRETARY OF THE SENATE

OTHER ACTION:

May 20, 2005 Engrossed
May 22, 2005 Sent to House

Engrossing Clerk Mardi O'Quinn

MAY 22 2005 Received from the Senate
MAY 22 2005 Read first time and referred to Committee on Natural Resources
Reported _____ favorably (as amended) (as substituted)
Sent to Committee on (Calendars) (Local & Consent Calendars)
Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)
Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not voting.
Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)
Returned to Senate.
Returned from House without amendment.
Returned from House with _____ amendments.
Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

CHIEF CLERK OF THE HOUSE

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays